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ABSTRACT

This guide provides teachers with materials and resources to develop basic legal concepts within the existing social studies curriculum. Drawing on the descriptions of sociology, philosophy, political science, and history, legal concepts and processes are studied in a societal context. The conceptual approach to law as a social institution uses the inquiry method to consider several important aspects of the law: What is the nature of law? What are its social functions? What are its limits? How does law work? Four teaching modules, each of which deals with a basic concept of the legal system, are included. The core of each module is contained in a statement of understandings to be gained through the study. An explanation for the teacher follows the statement, providing a background of legal knowledge and delineating the importance of each understanding. Objectives, general questions useful in reaching the understanding, and suggestions for use of visuals are listed. Classroom strategies are described and resources are noted. The bibliography includes written source materials, films and filmstrips, with information concerning sources for purchasing or renting. (Author/SHM)

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# TEACHING ABOUT BASIC LEGAL CONCEPTS in the junior high school

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# TEACHING ABOUT BASIC LEGAL CONCEPTS
## IN THE JUNIOR HIGH SCHOOL

The University of the State of New York/The State Education Department
Bureau of Secondary Curriculum Development/Albany/1973

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# FOREWORD

Many schools have requested assistance in improving teaching about the law in the secondary classroom. This pub intended to suggest ways that respect for the rule of law may be developed by bringing understanding of its function of our everyday living.

*Teaching About Basic Legal Concepts* does not impose a requirement for another course of study at the junior high Some schools will find the modules useful in consonance with the eighth grade program in United States History. In o the school may wish to give emphasis to this area in the total curriculum by using the modules in building minicourse course of study.

While still a student at Cornell University Law School, A. Bruce Campbell, now attorney at law with the firm of and Stubbs, Denver, Colorado, was impressed with the need for materials to help the teacher better handle topics conc Many secondary school students held misconceptions and misunderstandings because so little time was devoted to this a

Assisted by Cornell University Law School faculty and administrative staff of the Ithaca public schools, he devi develop teaching modules about the law. These modules were prepared by Mr. Campbell; Professor Robert Summers of Cor Law School; Mrs. Gail F. Hubbard, Ithaca High School; and John P. Bozzone, DeWitt Junior High School, Ithaca, under Stat Department sponsorship. Hillis K. Idleman, associate, Bureau of Secondary Curriculum Development, served as liaison f during the development and field testing stages.

Rose Mary Flihan, chairman of Social Studies, Barker Road Junior High School, Pittsford, developed additional te and identified a variety of resources for student use, drawing upon her own experience and the reports of other teach test of the original modules. Donald H. Bragaw, chief, and John F. Dority and Jacob I. Hotchkiss, associates, Bureau Education, reviewed the manuscript and made helpful suggestions concerning its revision. Janet M. Gilbert, associate Secondary Curriculum Development, had general charge of the publication project, and prepared the manuscript for prin

GORDON E. VAN HOOFT
*Director, Division of*
*School Supervision*

## FOREWORD

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GORDON E. VAN HOOFT
*Director, Division of*
*School Supervision*

# OVERVIEW OF UNDERSTANDINGS

The four modules are designed to develop the following understandings:

### MODULE I: THE LAW - WHO NEEDS IT?

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
- GUIDE AND COORDINATE THEIR ACTIVITIES
- DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

### MODULE II: TOOLS OF THE LAW

AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF TECHNIQUES OR TOOLS:

- THE BENEFIT DISTRIBUTION TECHNIQUE
- THE REGULATION TECHNIQUE
- THE PENAL TECHNIQUE
- THE PRIVATE REMEDY TECHNIQUE
- THE PRIVATE ARRANGEMENT TECHNIQUE

THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY

### MODULE III: LEGAL PROCESSES - HOW THE LAW PLAYS THE GAME ALSO COUNTS

SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

- THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- THEIR VALUE AS SOUND PROCESSES

SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE PROCE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL CO PROCESSES.

MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

### MODULE IV: SOME LIMITS OF LAW

IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT, LAW IS LIMI CAPACITY TO PROMOTE BOTH.

THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY CE FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTI BEHAVIOR OR ACTIVITY TO REGULATE.

IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT SOME KIN ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE FACTS.

# OVERVIEW OF UNDERSTANDINGS

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PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

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- THE PRIVATE ARRANGEMENT TECHNIQUE

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ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY, CIRCUMSTANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE FACTS.

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# HOW TO USE THIS GUIDE

## PURPOSE

This guide provides teachers with materials and resources to develop basic legal concepts within the existing
curriculum or within the schools K-12 social studies curriculum program. Drawing on the descriptions of sociolog
tical science, and history, legal concepts and processes are studied in a societal context. The conceptual approa
institution uses the inquiry method to consider several important aspects of the law: What is the nature of law?
functions? What are its limits? How does law work?

The use of such legal curriculum materials in the schools may prove important for two reasons. First, the la
resource to supplement education about the dynamics of modern society. Second, legal problems and literature are
resources for developing intellectual skills and the methodology of inquiry.

The teaching of substantive rules of law is not the goal of these modules. Rather, it is to enable teachers
ings with students about the role of law in society. When specific legal rules or processes are suggested for stu
that the particular rule or process is a vital one about which students should learn for its own sake. Particular
processes are presented only for illustrative purposes and as a basis for teacher and student understanding of the
that they illustrate.

## DESCRIPTION

This guide includes four teaching modules, each of which deals with a basic aspect of the legal system. Whil
that all modules may be taught during the course of the year, each of the units is usable independently. The modu
single block, or spaced according to the needs of the individual class. Field test experience has shown that each
takes approximately 2 or 3 weeks to teach.

The core of each module is contained in the understandings. An explanation for the teacher follows the state
standing. This rationale not only provides a background of legal knowledge for the teacher, but, in addition, deli
of the understanding. It is NOT intended for student use as written; the teacher may draw upon information containe
but there has been no attempt to translate it to junior high level. Objectives, general questions useful to reach
and some suggestions for use of visuals are listed. On the double-columned pages, there are detailed descriptions
strategies to reach the understanding, with notes for the teacher to explain the validity of the strategy and to
points to observe in using them. Resources which can be used for these strategies are grouped together at the en
but are cross-referenced (by case name, statute, or other appropriate designation, and by page) in the detailed de
teaching procedure. In many instances, the resource listing for a case will include a brief description of the ci
an excerpt from the decision is given. If either description or decision is available in a number of the inexpen
now available for secondary classroom use, those sources are cited.

The bibliography includes not only written source materials, but also films and filmstrips, with information
purchasing or renting.

## WHEN TO TEACH THESE MODULES

The modules in this guide can be incorporated into the social studies curriculum in a number of ways. They
adding an additional course of study, but, rather, as providing a more meaningful organization to the teaching of
the total social studies program.

Some schools may wish to use the modules in their entirety and consecutively, perhaps adding additional case
one-semester course of study. Some will find them useful to incorporate into a minicourse program. Since each m

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stand independently of others, they can be used to build one or two offerings of this type. Such treatment gives e important role of law in our society.

For many schools, however, they will be most useful to add a realistic dimension in teaching the mandated topi Federal and state government in grades 7 and 8.

The following timetable in the use of the modules as a part of the State program for Social Studies 8, United has been suggested by a teacher who worked on their development:

Module I: "The Law - Who Needs It" as an introduction to the entire eighth grade program since it gives the st ing of the necessity for law, and of the United States, a people with a government of laws.

Module II: "Tools of the Law" is related to the first understanding in Topic 8 (p. 127 in the syllabus).

> KNOWLEDGE OF THE CONSTITUTION OF THE UNITED STATES IS NEEDED AS A BASIC FOUNDATION FOR UNDERSTANDING THE OF THE FEDERAL GOVERNMENT.

In addition, the understandings in the same topic related to interrelationships among the levels of government bilities (p. 131) are more effectively taught through the use of this module.

In addition, module II stresses the effectiveness of law in dealing with specific social needs and problems, a useful for developing understandings related to prohibition and current social problems as well as the changing c relationship brought by the New Deal (p. 116).

Module III: "Legal Processes — How the Law Plays the Game Also Counts," is well suited as a vehicle for teach illustrative understandings from the eighth grade course of study:

> THE FRAMEWORK OF GOVERNMENT UNDER THE CONSTITUTION IS BASED UPON IMPORTANT POLITICAL PRINCIPLES. (p. 127
>
> MOST AMENDMENTS WERE ADDED TO THE CONSTITUTION TO MEET THE NEEDS OF OUR SOCIETY IN PARTICULAR PERIODS OF

By emphasizing the fundamental importance of fair process values (participation, fairness, legitimacy), module III teaching these and other understandings related to the Bill of Rights and the development of civil and political li history. A discussion of two approaches in dealing with the Bill of Rights and process values is discussed on page

The value of fair and rational processes would also be a helpful concept for students to understand because th with many situations in their study of United States history in which process values are at the core of major contro McCarthyism, the Warren Court (rights of poor defendants, reapportionment), and the Alien and Sedition Acts.

By stressing process values, module III will be particularly useful in teaching understandings related to the c by blacks in American history. Several illustrative examples of understandings from the syllabus related to this a

> THE LOUDLY PROCLAIMED PREWAR CONCERN FOR HUMAN JUSTICE OF NORTHERN LIBERAL AND RADICAL OPPONENTS OF SLAV CARRY THEM THROUGH THE LONG STRUGGLE NEEDED TO SECURE THE BASIC RIGHTS FOR NEGROES AFTER 1865. (p. 99)
>
> LONG OVERDUE PROGRESS ON CIVIL RIGHTS FOR NEGROES HAS ACCELERATED SINCE THE END OF WORLD WAR II. (p. 12

Module III contains a wealth of legal materials, including many important court cases, to help teachers plan lesso pressing issue that still faces our country today.

Module IV: "Limits of Law" contains several ideas that have not been taught before in any systematic way. Th seem, might be taught late in the year so that the teacher could draw on many examples from American history that the several limits of law: Prohibition (law unsupported by morality); controversies over loyalty oaths, the Pledg Bible readings (law cannot readily control thoughts and beliefs).

Finally, the legal materials can also help students develop social studies skills including respect for fact tional argument about matters of social principle, and capacity for sound value analysis.

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in their study of United States history in which process values are at the core of major controversies such as
en Court (rights of poor defendants, reapportionment), and the Alien and Sedition Acts.

cess values, module III will be particularly useful in teaching understandings related to the quest for equality
history. Several illustrative examples of understandings from the syllabus related to this area are:

PROCLAIMED PREWAR CONCERN FOR HUMAN JUSTICE OF NORTHERN LIBERAL AND RADICAL OPPONENTS OF SLAVERY DID NOT
THROUGH THE LONG STRUGGLE NEEDED TO SECURE THE BASIC RIGHTS FOR NEGROES AFTER 1865. (p. 99)

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matters of social principle, and capacity for sound value analysis.

# BACKGROUND INFORMATION ABOUT THE LEGAL SYSTEM FOR TEACHERS

Understandings about law and the legal system concern conceptual ground familiar to the social studies tea
of the nature, functions and limits of our law and legal system is largely a study of the operation of governme
This section contains a review of fundamental background information about the structure of the legal system.

Four aspects of the legal system are presented below. They include (1) kinds of law, (2) kinds of officia
legal proceedings, and (4) the court system.

## 1. KINDS OF LAW

Laws may be categorized according to their origin. Those types of laws that comprise the body of law in ou
(a) statutory law, (b) common law, (c) administrative law, and (d) constitutional law.

Statutory Law. Statutory law includes the law that is made by legislatures. At the Federal level, such l
statutes passed by the Senate and House of Representatives with the assent of the President. At the New York S
law is made by the Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of s
acted by local legislatures, such as a city council, with the assent of the appropriate local executive.

Common Law. Common law is judge-made law. Its source is the precedents established in the decisions of p
of American common law dates back to court cases from the beginning of this country and even before to the case
common law supplements statutory law by providing judicial interpretation of statutes and constitutions as they
cases. Other common law exists independently; for example, the rules for making a simple valid contract wh
not in statutes, but in cases of past legal history.

Administrative Law. Administrative law is made neither by legislators nor judges, but by administrative o
examples of administrative regulations include the rules promulgated by the New York State Commissioner of Educ
fications for teacher certification, rules promulgated by the New York State Commissioner of Motor Vehicles cor
for acquiring a driver's license, and rules promulgated by the New York State Tax Commissioner concerning the t
tax return must be filed.

Constitutional Law. The constitutional law of our Nation and states has its source in the written documen
Federal and state governments. This law establishes the boundaries within which governments can legitimately o
are to structure government and to limit the powers of officials in order to protect the governed from potentia
ment. When a legal system operates under the restraints of constitutional law, one may speak of it as a "gover
than a "government of men." The latter is a legal system without viable constitutional limits on the powers of
the only restraints on those in positions of official power are self-imposed restraints and the threat of poter

## 2. KINDS OF OFFICIAL TASKS

The day-to-day operation of the legal system is entrusted to legal officials and private citizens who per
of tasks: (a) making legal rules, (b) carrying out legal rules, and (c) adjudicating disputes under legal rule

Making Legal Rules. An important part of the jobs of many legal officials is making legal rules. Legisl
in the form of statutes. Judges make legal rules by deciding cases. Part of the job of administrators is
tions such as the regulations of the New York State Commissioner of Education. The executive makes rules in th
orders such as President Kennedy's famous executive order which requires all Federal officials to discourage c
ing out their duties relative to private housing. Private individuals also make many enforceable legal rules ir
ments such as contracts, leases, and wills.

## ION ABOUT THE LEGAL SYSTEM FOR TEACHERS

about law and the legal system concern conceptual ground familiar to the social studies teacher because the study
tions and limits of our law and legal system is largely a study of the operation of government in a free society.
ns a review of fundamental background information about the structure of the legal system.

the legal system are presented below. They include (1) kinds of law, (2) kinds of official tasks, (3) kinds of
and (4) the court system.

tegorized according to their origin. Those types of laws that comprise the body of law in our legal system include
(b) common law, (c) administrative law, and (d) constitutional law.

Statutory law includes the law that is made by legislatures. At the Federal level, such law is composed of
the Senate and House of Representatives with the assent of the President. At the New York State level, statutory
Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of state statutes, are en-
slatures, such as a city council, with the assent of the appropriate local executive.

ommon law is judge-made law. Its source is the precedents established in the decisions of prior cases. The origin
law dates back to court cases from the beginning of this country and even before to the case law of England. Some
nts statutory law by providing judicial interpretation of statutes and constitutions as they are applied in specific
n law exists independently; for example, the rules for making a simple valid contract which are usually found,
t in cases of past legal history.

Law. Administrative law is made neither by legislators nor judges, but by administrative officials. Familiar
trative regulations include the rules promulgated by the New York State Commissioner of Education concerning quali-
er certification, rules promulgated by the New York State Commissioner of Motor Vehicles concerning qualifications
ver's license, and rules promulgated by the New York State Tax Commissioner concerning the form in which the annual
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Law. The constitutional law of our Nation and states has its source in the written documents that provide for our
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## AL TASKS

operation of the legal system is entrusted to legal officials and private citizens who perform the following types
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sident Kennedy's famous executive order which requires all Federal officials to discourage discrimination in carry-
s relative to private housing. Private individuals also make many enforceable legal rules in private legal arrange-
acts, leases, and wills.

Carrying Out Legal Rules. Legal officials are also charged with the carrying out of legal rules. Taxing, sp aspects of legal action are implemented by officials of administrative agencies Criminal laws are enforced by po Private citizens also play key roles in carrying out diverse kinds of legal rules. For example, private citizens government implement many legal rules (teachers carry out mandates of the education law, private contractors carry cerning highways). Private citizens carry out many legal rules in making private legal arrangements among themsel etc.) Legal rules concerning civil liability are carried out only after private individuals initiate lawsuits.

Adjudicating Disputes Under Legal Rules. Adjudication of legal disputes is primarily a task of judicial offi cials share this task. Many legal disputes are adjudicated in hearings before administrators. Disputes concernin are most often adjudicated before educational administrators. Drivers' licenses are suspended in hearings before the motor vehicles commissioner. Labor disputes go before labor department administrators. Such administrative a subject to ultimate judicial adjudication through the process of judicial review. Legislative adjudication also o circumstances; for example, when a legislator is censured by fellow legislators.

## 3. KINDS OF LEGAL PROCEEDINGS

Although the mention of legal proceedings often brings to mind the activities of the courtroom, judicial proc of several kinds of legal proceedings in which legal officials engage. In this section, we will consider (a) judic (b) legislative proceedings, and (c) administrative proceedings.

Judicial Proceedings. One familiar sort of judicial proceeding is the trial, a legal proceeding where a judg impartial third party to resolve many kinds of disputes. In a *civil lawsuit*, a private party may seek relief from has been done to him by another private party or by improper official action. In a *criminal case*, the government i district attorney or prosecutor may bring an accused private party to trial to seek redress for a wrong supposedly at large. Another sort of judicial proceeding is carried on in appeals courts where judges review the propriety at the trial court level. If the appeals court judges find that the trial judge has made a serious mistake, they back for a new trial.

Legislative Proceedings. There are two main kinds of legislative proceedings—passage of laws and the invest tion to passage of laws. The methods by which a bill may become a law are familiar. Most of the work of the legi in investigatory hearings and in research where background information for lawmaking is collected and considered. are carried out primarily by legislative committees and their staffs.

Administrative Proceedings. Elements of judicial proceedings and legislative proceedings are present in admi ings. Administrative officials investigate and promulgate regulations under powers granted them by legislative ac administrators serve as a third party to resolve disputes that arise under administrative regulations.

## 4. THE COURT SYSTEM

Because our legal system is a Federal system of coexistent National and State Governments, we have coexistent courts. This system is diagramed on the following page.

Questions of which courts have jurisdiction over what cases are extremely complicated. A few simplified gene helpful here. Federal courts generally handle cases involving citizens from different states or questions of Fede may be started in either State or Federal court. In the Federal courts, cases start at trial in the Federal distr is a right to one appeal which is generally to a Federal Court of Appeals. The U.S. Supreme Court, highest Court may not agree to hear a second appeal.

In the New York State courts, cases start at trial in the supreme court or in a local court that handles the case. If the case starts in a local court, the right to one appeal is to the State Supreme Court. If the case st

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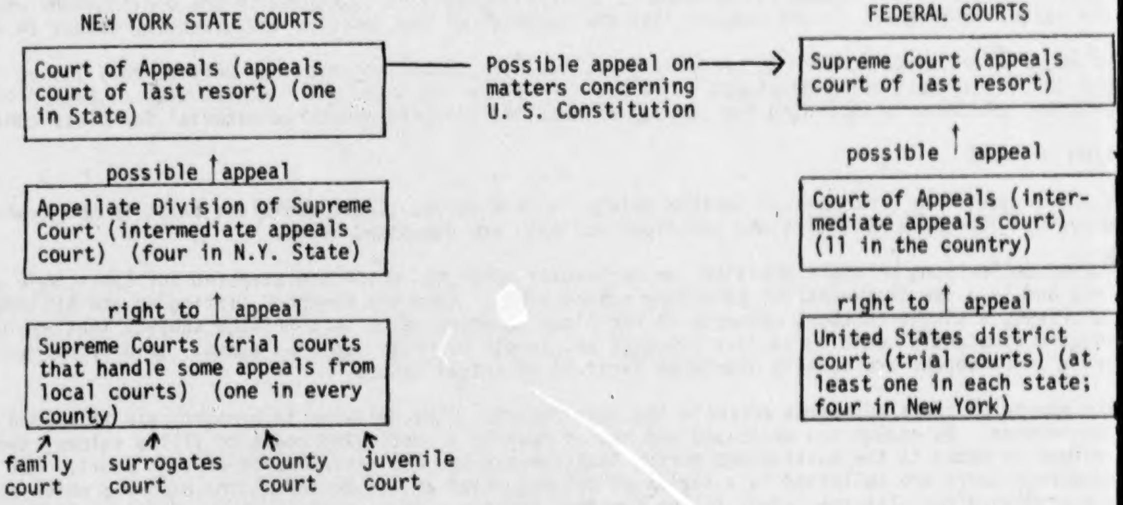
in a local court, the right to one appeal is to the State Supreme Court. If the case starts in the State

Supreme Court, the right to one appeal is to one of the four Appellate Division Courts. The New York Court of Appe Supreme Court, may grant an additional appeal. The only time a case may be appealed from a state to a Federal cou court of last resort to the U.S. Supreme Court, provided that a Federal law is involved and that the U.S. Supreme the case.


NEW YORK STATE COURTS
FEDERAL COURTS
Court of Appeals (appeals court of last resort) (one in State)
Possible appeal on matters concerning U. S. Constitution
Supreme Court (appeals court of last resort)
possible appeal
Appellate Division of Supreme Court (intermediate appeals court) (four in N.Y. State)
possible appeal
Court of Appeals (intermediate appeals court) (11 in the country)
right to appeal
Supreme Courts (trial courts that handle some appeals from local courts) (one in every county)
right to appeal
United States district court (trial courts) (at least one in each state; four in New York)
family court
surrogates court
county court
juvenile court

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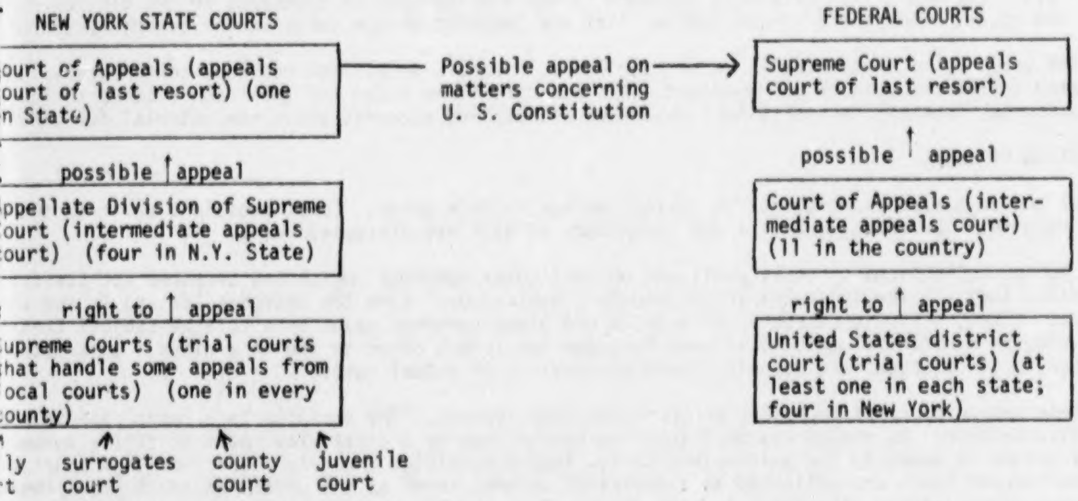

NEW YORK STATE COURTS

ourt of Appeals (appeals
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n State)

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possible ↑ appeal

ppellate Division of Supreme
ourt (intermediate appeals
ourt) (four in N.Y. State)

right to ↑ appeal

upreme Courts (trial courts
hat handle some appeals from
ocal courts) (one in every
ounty)

ly
t

surrogates
court

county
court

juvenile
court

FEDERAL COURTS

Supreme Court (appeals court of last resort)

possible ↑ appeal

Court of Appeals (intermediate appeals court) (11 in the country)

right to ↑ appeal

United States district court (trial courts) (at least one in each state; four in New York)

COLLECTING RESOURCE MATERIALS FOR CLASSROOM USE

Use of primary legal resource material has proven to be extremely effective in the classroom. Students of all responded well to adapted versions of actual cases and statutes. Many of the cases are available in materials alrea secondary students' use. Any one of the casebooks included in the bibliography of casebooks in the bibliography wou cases suggested in the guide. References in the modules list the location of the cases in the secondary school leve

In order for the teaching of these modules to be meaningful, teachers should not overlook contemporary issues i and situations related to the concepts being developed. *The New York Times Index* and *The Readers Guide to Periodica* both useful to students and teachers in searching for sources of detailed accounts about new material for class cons

LOCATION AND ADAPTATION OF CASES

Court decisions are suggested as resources at various points in this guide. Court decisions exist in two types casebooks and case reports. The characteristics and advantages of each are discussed below.

Casebooks are edited collections of court decisions on particular subjects which are prepared for law school u study, general reading, and, in a few instances, for secondary school study. (See the casebook listing in the bibliog offer two advantages. First, a single casebook collects in one place numerous cases on a related subject that may b Second, most cases require substantial editing of case language and length prior to use in a class. In a casebook t done, as cases appearing in casebooks are usually shortened versions of actual cases.

The most complete source of court decisions exists in the case reports. The decision in a court case is handed or judges as a written opinion. As enough new decisions are handed down by a particular court to fill a volume, the gether, and the new volume is added to the multivolume series that constitutes the case reports of that court. For of the United States Supreme Court are collected in a series of volumes, known as the *United States Reports*, which c 400 volumes. One case suggested for classroom study is the New York Regents prayer case, Engel vs. Vitale. In the a citation for this case appears as "vol. 370 *U.S. Reports*, p. 421 (1962)." Thus, the Supreme Court decision for the Vitale, which was handed down in 1962, is located in volume 370 of the *United States Reports* at page 421.

While the *United States Reports* contains U.S. Supreme Court cases, cases from other courts (or groups of court are collected in other series of volumes. The diagram of the court system below indicates the names of the reports the particular courts are collected.

| | NEW YORK COURTS | FEDERAL COURTS | |
|---|---|---|---|
| New York Reports | Court of Appeals (court of last resort) | Supreme Court (Court of last resort) | U.S. Reports |
| New York Appellate Division Reports | Appellate Division of the Supreme Court (four in state) | Court of Appeals (11 in the country) | Federal Reporter |
| New York Miscellaneous Reports | Supreme Court (one in each county) | United States District Courts (at least one in each state) | Federal Supplement |

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In addition to the case reports of the various Federal and State courts, the important decisions of all 50 sta
are selected for publication in the regional reporters. These reporters are *Atlantic Reporter, Northeastern Report*
*Reporter, Southeastern Reporter, Northwestern Reporter, Southwestern Reporter,* and *Pacific Reporter*. For example,
New York courts are collected in the *Northeastern Reporter* along with cases from Indiana, Illinois, Massachusetts,

Case reports are available in every county courthouse library, in large public libraries, and in college or un
The libraries of practicing lawyers contain some case reports. Although the case reports are the most complete sou
decisions, casebooks are more easily used in the preparation of materials for secondary students.

As they appear in the case reports or in casebooks, court cases normally will require editing before they are
suggested in this guide. Since courts often devote large portions of a decision to discussing technical points of
no importance for secondary school adoption, most cases can be shortened. Where vocabulary is too difficult for st
may also want to paraphrase to clarify the cases.

## LOCATION AND ADAPTATION OF STATUTES

Selected legislation passed by the United States Congress or by the New York State Legislature is suggested as
at various points in this guide. These suggestions refer to some of the hundreds of statutes passed each year by t
legislatures on scores of topics. These laws are consolidated by subject (codified) in statute books. For example
motor vehicles are collected in a single place, all the laws on crimes are collected in a single place, etc. All
is periodically codified and updated in approximately one dozen volumes called the *United States Code*, containing
areas called titles. The entire code as well as each of the separate titles is indexed reasonably well. All New
is codified by subject in a series of statute books called *McKinney's Consolidated Laws of New York*. In this mult
statute law of the State is consolidated under 70 different subjects, and indexed well by topic through the entire

The *United States Code* and the *Consolidated Laws of New York* can be found in any county court house, and may
college, university, or public libraries. Practicing attorneys generally have copies of the Federal and state sta
libraries.

As with cases, editing will usually be necessary before using statutes for classroom study. The text of the
duced in length, language can be simplified, and technical legal material can be deleted.

## A LAW RESOURCE SUPPLEMENT FOR SOCIAL STUDIES RESOURCE CENTER

Compilation of student materials from primary sources involves use of some resources that may be unfamiliar o
available in the school or public library. One means of facilitating the process of compiling student materials i
school district to acquire books for a law source supplement to the social studies resource center. A list of boo
vant resource materials is found in the bibliography. Acquisition of one book from each of the suggested categori
"mini" resource collection that would facilitate locating classroom materials for study.

## THE ATTORNEY IN THE CLASSROOM

The New York State Bar Association and several local bar associations have expressed an interest in assisting
the teaching of law in the schools. This resource should not be overlooked when assistance is needed in the locat
legal materials. If a law library is not available, local attorneys generally possess a comprehensive collection
ture. Once resource material is located, the attorney may prove useful in the process of adapting it for student u

Many classes will not be able to have legal talent available for more than one or two occasions. However, a
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classes over a period of time, providing several members who could be available at different times throughout the
of the legal concepts. If a visit to court is arranged as part of such a program it is particularly helpful to

have an attorney to brief the class before the visit, and to answer questions afterwards. In addition, if a law lib
accessible, the teacher may find that a local attorney would have casebooks and other resources which he could borro

Live resources, perhaps even more than written and audiovisual materials, require careful planning in order to
potential. Some planning procedures which help both attorney and class to work effectively together include:

- discussion of the specific topics for which the attorney's expertise is needed, well in advance of the date
  will be present. Some questions which students have raised concerning these topics would provide helpful gu
- a brief but specific statement concerning the course of study, including what has been discussed in class pr
  participation.
- the loan to the participating attorney of any curriculum materials being used to structure the classwork.
  provide copies of related student material.
- provision for the attorney to identify misconceptions which students may have about the legal processes to b
  attorney may wish to question students before he works with the class. A student committee could call on hi
  to help with this task.

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ask.

## MODULE I: THE LAW-WHO NEEDS IT? *

1. *The Main Focus.*

What is law? Is it necessary to modern society? The consideration of these questions is a logical place for gin thinking about the role of law in modern society. As this module develops, the main focus will be on three of law tions that are necessary to a modern society: laws provide a process by which many disputes can be resolved rationall guidance in complex human activity that might otherwise be chaotic or unsafe, laws protect people from antisocial con who might harm them.

2. *Why This Focus?*

Developing these understandings about the social necessity for law will provide the means to examine a number conceptions about the law and about the purpose of the legal system.

First, some students may think that the fact that we have so much law in our complex society is mere happensta legal processes are not really social necessities. Providing rational processes for dispute resolution, providing soc providing protection from antisocial conduct are by no means the only necessary social functions of law, but in stud fills these fundamental social functions, students may perceive how law is in fact a social necessity.

Second, most students will think law exists mainly to punish people for doing bad things. Even students who social necessity are apt to think that only the criminal law is really essential. This exaggerates law's restrictive exist primarily to *facilitate* social life. The necessity for many laws and legal processes does not rest on the exis doers. Law would be needed in society as we know it even if all citizens were men of good will at all times.

A third fundamental misconception about the nature of law treated in this module is that all law consists of makers make which tell people what to do. Rather, laws are responses to particular social needs. And they include mo the legal system also includes legal processes and legal officials. This is necessarily so because rules are not self applying, or self-changing.

A fourth common misconception is that legal processes are merely ritualistic technicalities. The failure of social needs that have called it into play can be explained in several ways: the need may be beyond law's effective c for fellow man), the rule may be unwise (a speed limit can be set too high or low), *or* the process may be ill-designe claims are backed up in some urban courts as much as 5 years). Existence of defective legal processes fosters the m the part of many that legal process is necessarily only technical ritual that interferes with operation of rules. Alt processes may be well or ill designed, legal process is essential to provide a structured, rational means of getting r changed, or applied in specific circumstances.

3. *Outline of the Teaching Scheme.*

To show how law is a social necessity, this module treats: the law as supplier of processes for resolving fa that actually arise (Understanding I), the law as guider and coordinator (Understanding II), and the law as protector III). Stated in another way, the module is designed to show the student that some laws are responses to society's bas "process" of law, some responses to its basic need for the "guidance" of law, and some responses to its basic need for law. While in most instances where law operates, these three uses of law interact, this module directs attention to t importance of each.

In addressing the necessity for law, students may be very much inclined to focus first and only on crimes. T module one postpones consideration of the need for laws to protect persons and property from others until the end. In helpful to direct student interest away from criminal law by pointing out the variety of other familiar subjects with A simple, but dramatic way to demonstrate this is to bring a volume of statutes or case reports into the classroom. I tables of subjects covered in either of these original sources, one discovers that criminal matters are only a *small* subjects treated by law.

*Material on this page is background information for the teacher.

# MODULE I: THE LAW-WHO NEEDS IT?*

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needed in society as we know it even if all citizens were men of good will at all times.

amental misconception about the nature of law treated in this module is that all law consists of rules that rule-
l people what to do. Rather, laws are responses to particular social needs. And they include more than rules;
includes legal processes and legal officials. This is necessarily so because rules are not self-creating, self-
nging.

mon misconception is that legal processes are merely ritualistic technicalities. The failure of law to meet the
e called it into play can be explained in several ways: the need may be beyond law's effective capacity (respect
rule may be unwise (a speed limit can be set too high or low), *or* the process may be ill-designed (auto accident
in some urban courts as much as 5 years). Existence of defective legal processes fosters the misconception on
legal process is necessarily only technical ritual that interferes with operation of rules. Although legal
l or ill designed, legal process is essential to provide a structured, rational means of getting rules made,
specific circumstances.

*aching Scheme.*

law is a social necessity, this module treats: the law as supplier of processes for resolving fairly disputes
(Understanding I), the law as guider and coordinator (Understanding II), and the law as protector (Understanding
ther way, the module is designed to show the student that some laws are responses to society's basic need for the
e responses to its basic need for the "guidance" of law, and some responses to its basic need for the "threat" of
instances where law operates, these three uses of law interact, this module directs attention to the independent

g the necessity for law, students may be very much inclined to focus first and only on crimes. To avoid this,
consideration of the need for laws to protect persons and property from others until the end. Initially, it is
dent interest away from criminal law by pointing out the variety of other familiar subjects with which law deals.
c way to demonstrate this is to bring a volume of statutes or case reports into the classroom. In examining the
overed in either of these original sources, one discovers that criminal matters are only a *small* fraction of the
law.

ge is background information for the teacher.

Module 1

SUMMARY OF UNDERSTANDINGS

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
- GUIDE AND COORDINATE THEIR ACTIVITIES
- DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

UNDERSTANDING I

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO PROVIDE RULES AND PROCESSES FOR RESOLVI
DISPUTES FAIRLY AND RATIONALLY.

A. *Explanation of Understanding I*

The focus of this understanding is on the law as a process, the function of which i
disputes on the basis of principles rather than by use of sheer power or other arbitrary mea
stand this process, the students must first recognize that (1) conflicts are not limited to "
circumstances where a "good" person confronts a "bad" one, but are commonplace among all me
(2) while many of these conflicts can be ironed out by negotiation, goodwill, forgetting abo
etc., some are sufficiently serious to require help from society in resolving them fairly an
(3) one of the functions of law is to provide this help; and (4) that for the law to carry o
must follow fair and reasonably efficient procedures itself. The teaching materials suggest
designed to help achieve this understanding by considering how good-faith conflicts naturall
people live together, by examining some alternative methods of resolving such conflicts, and
how the judicial system sets about this task of resolving disputes.

B. *Teaching Understanding I*

OBJECTIVES

- The student can develop awareness of the universality of disputes by observations o
  around him as well as through directed viewing of selected cases.

SUMMARY OF UNDERSTANDINGS

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
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n sets about this task of resolving disputes.

*ding I*

n develop awareness of the universality of disputes by observations of the world
well as through directed viewing of selected cases.

Module 1

- The student can indicate the need for structuring in the resolution of conflict by id the rules that pertain to any resolution and by assessing the effectiveness of these in leading to a successful settlement of the dispute.

QUESTIONS TO REACH UNDERSTANDING

- Even if there were no people who would purposefully do harm to others, given a chance society like ours need some official process for dispute resolution? The question ca of pupils: "Must there be laws and penalties even in a utopia?"
- Why is it important that official bodies for dispute resolution (courts) have some ru *how* they will go about settling disputes? Relate to the pupils' family lives: Are c settled through violent action or through a calm, logical, reasoning, "talk" session are followed in such a "talk" session? Is there a followup to determine how the pena will be meted out?

USE OF VISUALS

- Students may take pictures or cut pictures from newspapers and magazines which por confrontation between two or more persons, in which a dispute seems imminent.
  - What is (might be) the subject of the dispute?
  - What cues are there, that one or more people is (are) angry or upset by the confro
  - How does the information you can get about the scene (from newspaper or from inte participants) compare with what you thought was happening?
  - Are there any rules that the participants seem to follow in discussing the questio
- The cartoons on pages 6, 7, and 9 can be analyzed, using the questions above.
- Study pictures, such as those produced by Documentory Photo Aids can be helpful also additional visual sources in bibliography.)

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UNDERSTANDING

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Module 1

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Some disputes, even among men of good faith, create a need for legal process.

The following are suggested classroom strategies that may be used to prove this statement.

(a) Divide the class into three groups and let each group determine the cause and possible resolution of the following hypothetical cases:

—Jones has stolen Smith's watch and sold it to Clark who innocently believed it was Jones' to sell. Jones is nowhere to be found, and now Smith and Clark lay claim to the watch. (Rule: The owner of property has a right to possession.)

—Green and White have had a head-on collision in which each was seriously injured and had hospital bills of $10,000. Each honestly believes the accident was caused by the other's presence on the wrong side of the road and should be paid for by the other. (Rule: If a person's negligence causes injury to another, he must compensate him for the harm.)

—Jackson has an agreement with Washington that requires him to build a house. The contract

Initially, the teacher might raise the
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The three sample good-faith disputes s
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the rule in question to determine what
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Case two, the head-on accident, shows
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Initially, the teacher might raise the question: Is it enough to have rules of law? By starting with some very basic rules of law and presenting simple good-faith conflict situations to which these same rules might be applied for resolution, the student should see that additional rules are needed to set up processes for fair application of the rules to specific dispute situations. Even good-faith disputants who agree on a rule may be unable by themselves to come to an agreement on how their conflict should be resolved.

The three sample good-faith disputes suggest three separate ways in which honest men may find themselves locked in conflict. Case one, the stolen watch resold, shows that honest men of good faith may disagree on *their interpretations* of what a rule means. Here, some process is needed to further refine the rule in question to determine what constitutes property ownership.

Case two, the head-on accident, shows that men of good faith may have *their facts* wrong; one has his facts wrong in this case. Some process is needed to make a rational attempt at determining which of the good faith disputing parties has his facts right.

Case three, the building contract, demonstrates that honest men may have *differing judgments*. Some process is needed to decide, given these facts, whose perception of what constitutes "standard quality workmanship" is the more reasonable.

## DETAILED DESCRIPTION OF STRATEGIES

requires "standard quality workmanship." A week after Washington moves in, the area suffers the worst rain in 50 years; a cellar wall cracks. Each, Jackson and Washington, believes that under their agreement the other should bear the expense of repairing the wall. (Rule: When one fails to perform his promise under a contract, he must put the other party in the position he would have been in if the promise had been performed.

Have each group elect a group leader who will present the case and conduct discussion. Each group leader will report back to the entire class the possible solutions. Teacher should draw together all discussion with final conclusions.

(b) Present to the class one of the above-listed hypothetical cases with basic premise and solution. Then divide class into teams of five to seven pupils to devise their own case and solution. Have team leaders cite case they have devised. See if other groups can break the deadlock before leader gives his solution.

## DISCUSSION OF STRATEGIES AND RESOURCE

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## DISCUSSION OF STRATEGIES AND RESOURCES

In each of these three cases, some rational process for fair dispute resolution is needed. The law attempts to meet this need by supplying substantive rules, third parties (courts) to resolve the dispute, and procedures for courts to follow.

The teacher might construct hypothetical dispute situations like those outlined above to provide material for classroom discussion. Alternatively, students might better grasp the notion of a good-faith conflict which defies private resolution if they are called upon to work in small groups to construct such situations themselves.

Presenting a good-faith conflict situation in the form of a skit may increase student interest and participation and provide an excellent springboard to the question: What are various ways disputes might be resolved when disputants are deadlocked? With a little direction from the teacher, class discussion may evaluate alternatives of coin flipping, etc. and the need for an official method of dispute resolution—a judicial process.

Cases included in Judgment Case Study No. 11, *Using Tort Cases in the Classroom* would also be useful here. The "Background for Teachers" section of this leaflet helps the teacher understand the points of law involved.

"The Case of the Missing Ring" in the pamphlet, *Courts and the Law*, is also applicable.

## DETAILED DESCRIPTION OF STRATEGIES

(c) Have teacher select pupils in the class to play the roles in each of the following skits —first without, then with the benefit of the legal process. Ask class to consider, while watching skits, whether the matter could conceivably be solved without the legal process. It would be interesting to have the pupils chosen do it extemporaneously to see what direction they would take.

—Photographer Smith takes a a picture of a famous actress in town while she is mowing the lawn with a new Torch Lawnmower. The picture appears in the morning newspaper with a caption of the actress extolling the merits of the lawnmower and encouraging all to buy one as soon as possible. The actress immediately sues the newspaper stating she never endorsed that product. The photographer states that she used it in public so that he was within his rights in making the assumptions that he did.

—Mrs. Smith claims that her son Johnny's fifth grade teacher, Miss Jones, is always calling him slow. He has developed an inferiority comples and as a result she intends

## DISCUSSION OF STRATEGIES AND RESOUR

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of copyright restrictions. It
New Yorker Magazine, 1971. dra
J. Mirachi

Drawing by J. Mirachi; © 1971 The
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See text, p. 3.

## ION OF STRATEGIES

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Drawing by J. Mirachi; © 1971 The New Yorker Magazine, Inc.

See text, p. 3.

to sue Miss Jones. In checking Johnny's record, it is discovered by the principal that his marks have always been below average.

(d) In a general class discussion, ask pupils to evaluate (1) how equitable it would be to solve a problem in each of the following ways and (2) whether the dispute would irrevocably be settled:

- . Coin flipping
- . Fighting
- . Turning to a friend of one of the disputants
- . Taking the dispute to an official court

(e) Have each of four pupils do research on how legal decisions were arrived at in various cultures based on various codes or documents. Each pupil should report on one of the following to the class:

- . Code of Hammurabi
- . The Koran
- . Code of Napoleon
- . Soviet Constitution

The book, *Treasury of Law*, by Richard Nice, publisher: Philosophical Library, 1964, is an excellent source for materials giving the pupil a "broad sampling of man's legal tradition." (Excerpts from this text will be quoted later on in

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See text, p. 3.

DETAILED DESCRIPTION OF STRATEGIES

this first module.) However, if the above mentioned book is unavailable, references such as *The Human Adventure* include excerpts from one or more of these documents.

2. The need for rules regulating how courts will go about resolving disputes.

(a) Divide the class into five groups. Have each group prepare and present a vignette showing the consequences if a judge or jury resolved a dispute without taking into consideration one of the following:

- rules requiring that *both* sides be notified that the court is going to act on the dispute
- rules allowing both sides the chance to be heard
- rules that try to assure that judges are qualified
- rules allowing the loser to appeal when he feels the third party has made a mistake

(b) Have pupils examine provisions for the establishment and operation of a court system including provisions for some necessary processes if courts are to resolve disputes fairly. To familiarize them with the New York State constitution,

DISCUSSION OF STRATEGIES AND RESOURCE

Having arrived at a need for some leg
help resolve disputes, suggested proc
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The teacher might propose resolution
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Statutory and constitutional provisio
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(Examples of edited or abridged statu
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DISCUSSION OF STRATEGIES AND RESOURCES

Having arrived at a need for some legal process to help resolve disputes, suggested procedures and resources attempt to show that if the courts are to do this job properly they must follow certain procedures themselves.

The teacher might propose resolution of one of the disputes the class has already considered in an imaginary court that places very little value on such processes. This court might not notify the other party, might not listen to the disputant's arguments, or might have judges who are patently unqualified to do their jobs.

Statutory and constitutional provisions setting up the New York court system and outlining a few basic procedural rules of court are suggested to demonstrate that American courts try to conform to fair processes. (Examples of edited or abridged statutes are included in module IV, pages 158-159). If the teacher chooses to use these original statutory and constitutional resource materials, he should freely edit and paraphrase such materials for student use. However, he may wish to check with an attorney or bar association representative concerning whether his changes in wording change the intent of the statute.

you might have them look up the particular articles summarized on pages 11 and 12.

—establishing uniform court system

—starting a case by notifying the other side

—qualifications and removal of judge

—provision for courts to hear appeals from lower courts

(c) Have class view a videotape, film, or filmstrip on the organization of our courts. Some examples:

. "Structure and Organization of American Courts." Encyclopedia Britannica Films. b/w, 30 min.

. On videotape, from the WNBC-TV, Our Legal Profile series—Programs 10-24, "Attorney at Law"; 10-25, "Bench and Bar"; 10-26, "Conscience of the State."

**A cartoon has been omitted here becau**
**restrictions. It is from the March**
**__Review__.**

3. __Actual dispute resolution in court__.

(a) As a class, visit a local court to see a case at trial similar in subject matter to a dispute discussed in class. (Contact the city court clerk or county court clerk to make arrangements.) If it is not possible to take a large group,

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Students may benefit from seeing how a dispute like one they have discussed was actually settled in court. If they visit a trial, a clerk or judge might be very helpful in explaining the trial court's role in resolving private disputes. If an appellate opinion is examined, students will see law's dispute-

DETAILED DESCRIPTION OF STRATEGIES

perhaps certain select members of class might go and report back to the total group.

(b) Discuss with class an appellate court decision of an actual case that addressed a dispute similar in its facts to that on which the students did a skit. Make use of synthesized version of such cases as Carroll v. Bouley (p. 12), O'Connor v. Clark (p. 13), Stees v. Leonard (p. 14).

(c) Invite a local attorney to speak to your class on the role of the judicial process in resolving private disputes fairly. (Ask the local bar association to help find a speaker. In some cities, the bar association has a program already in progress.) Have a panel to question the speaker when he completes his talk.

(d) Have class view a filmstrip or movie on a lawsuit. One possibility is "The Witness to an Accident" (30 min. b/w).

This film documents and dramatizes a civil lawsuit based on an automobile injury case. Delineates roles played by lawyers for plaintiff and defendent.

DISCUSSION OF STRATEGIES AND RESOURC

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already rendered a decision. The pa
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he speaks to the class. (See p. xiv

Students who wish to read detailed d
the role of each of the principals i
will find such a description in Chap
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## ON OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

resolving process at a level after a trial court has already rendered a decision. The party who has brought the appeal is challenging this decision as a mistaken application of the law. If an appellate opinion is used, it will need substantial teacher editing. (See "The Attorney in the Classroom," p. xiii). A local lawyer might be willing to help with the editing if the teacher feels such help is called for.

A visit from an attorney to discuss dispute resolution by the courts could be very interesting to students. Such a visitor might be most effective if the teacher is able to focus his presentation by informing him of the students' course of study before he speaks to the class. (See p. xiv.)

Students who wish to read detailed descriptions of the role of each of the principals in a court case will find such a description in Chapter 1, Starr, *The American Judicial System.*

## RESOURCES*

**New York State Constitution**

### Article VI - Section I

...states information about the Supreme Court -- how set up -- what the judici
districts are -- number of justices -- how they will be chosen -- that the leg
lature may alter the judicial number after a Federal census -- that they may
increase the number of justices except that the number of justices in each dis
shall not exceed one for each 60,000 people.

### Article VI - Section IV

"The official terms of the justices of the supreme court shall be fourteen yea
from and including the first day of January next after their election." ...go
may appoint someone to fill vacancy until next election occurs.

### Article VI - Section XX

"The testimony in equity cases shall be taken in like manner as in cases at la
the legislature shall have the same power to alter and regulate the proceeding
and jurisdictions in law and in equity that it has exercised before."

### Article VI - Section XXII

...states that any judge of the court of appeals, justice of the supreme court
judge of the court of claims, county court, surrogate's court, (or) family cou
removed for cause or forced to retire because of mental or physical disabilit
that prevents fulfillment of his judgeship -- only, however, after notice and
hearing proceedings by the court of the judiciary. -- further states the mem
that will be on the court of judiciary for hearings. -- an affirmative vote
at least four members will result in justice's removal.

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*Direct quotations from statutes are indicated by the use of quotation marks. Other st
summaries or paraphrases of the statute listed.

# RESOURCES*

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nay alter the judicial number after a Federal census -- that they may
e the number of justices except that the number of justices in each district
ot exceed one for each 60,000 people.

- Section IV

ficial terms of the justices of the supreme court shall be fourteen years
d including the first day of January next after their election." ...governor
oint someone to fill vacancy until next election occurs.

- Section XX

stimony in equity cases shall be taken in like manner as in cases at law...
islature shall have the same power to alter and regulate the proceedings
isdictions in law and in equity that it has exercised before."

- Section XXII

es that any judge of the court of appeals, justice of the supreme court,
f the court of claims, county court, surrogate's court, (or) family court may be
for cause or forced to retire because of mental or physical disability
events fulfillment of his judgeship -- only, however, after notice and proper
proceedings by the court of the judiciary. -- further states the members
ll be on the court of judiciary for hearings. -- an affirmative vote by
t four members will result in justice's removal.

s from statutes are indicated by the use of quotation marks. Other statements are
aphrases of the statute listed.

Module 1

Article VI - Section XXIII

--states specifically that the State Assembly has the power of impeachment o
Governor or Lieutenant Governor by a majority vote -- states that the State
Senate shall conduct the actual trial itself -- a two-thirds vote is needed
for conviction.

*McKinney's Consolidated Laws of New York* - "Civil Practice Law and Rules." Vol.
Section 304.

--states that a civil proceeding is begun and jurisdiction secured by a summ
A special proceeding is commenced by serving a notice of petition or order t
show cause. However, this above stated law should not be misconstrued to me
that unless a service of process is obtained, there can be no proceedings.
According to section 103, "civil judicial proceedings shall not be dismisse
solely because it is not brought in the proper form, but the court shall mak
whatever order is required for its proper prosecution."

*Carroll v. Bouley*, in Vol. 338, *Massachusetts Reports*, p. 625, (1959).

(An auto accident claim)

An action against an administrator of an estate for injuries sustained by th
plaintiff. When she was riding in an automobile stopped near intersection
streets on a clear dry morning, another automobile entered and crossed the i
section from the opposite direction against a red traffic light and, moving
speed of 35 miles an hour, struck and broke the post of the traffic light a
then crossed the street and struck the automobile occupied by the plaintiff
She maintained that she saw the other automobile coming and "did not observ
in the driver's seat before it hit the post," and there was evidence that wi
5 minutes after the collision between the two automobiles, the defendant's
was found lying on the floor of the other automobile, alone and suffering s

Article VI - Section XXIII

--states specifically that the State Assembly has the power of impeachment of Governor or Lieutenant Governor by a majority vote -- states that the State Senate shall conduct the actual trial itself -- a two-thirds vote is needed for conviction.

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--states that a civil proceeding is begun and jurisdiction secured by a summons. A special proceeding is commenced by serving a notice of petition or order to show cause. However, this above stated law should not be misconstrued to mean that unless a service of process is obtained, there can be no proceedings. According to section 103, "civil judicial proceedings shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution."

rroll v. Bouley, in Vol. 338, Massachusetts Reports, p. 625, (1959).

(An auto accident claim)

An action against an administrator of an estate for injuries sustained by the plaintiff. When she was riding in an automobile stopped near intersection of 2 streets on a clear dry morning, another automobile entered and crossed the intersection from the opposite direction against a red traffic light and, moving at a speed of 35 miles an hour, struck and broke the post of the traffic light and then crossed the street and struck the automobile occupied by the plaintiff. She maintained that she saw the other automobile coming and "did not observe anyone in the driver's seat before it hit the post," and there was evidence that within 5 minutes after the collision between the two automobiles, the defendant's relative was found lying on the floor of the other automobile, alone and suffering severely

from a heart attack of which he died shortly thereafter. It was learned that,
operating the automobile normally, he had experienced a sudden and unforseeabl
physical seizure depriving him of the capacity to control his automobile befor
entered the intersection, so that he was exonerated from responsibility for it
operation thereafter, and the plaintiff had no case.

O'Connor v. Clark, in Vol. 32, Atlantic Reporter, p. 1029, (1895)

(The right to property sold by a nonowner)

The owner of a wagon (O'Connor) allowed another individual (Tracy) to print hi
name and occupation on the wagon making the public think it belonged to Tracy
An individual (Clark), in good faith, bought the wagon. The first owner (O'Con
cannot recover his original property.

From appeal statement by judge: "It is contended that...defendant (Clark) pu
the property in question from Tracy in the honest belief that he was in fact
owner thereof; that the name and occupation of Tracy—viz. 'George Tracy, Pi
Mover'—were on the wagon when he offered it for sale, and that fact was refe
to as indicating his ownership of the property, etc.; that Tracy being a stra
defendant was specially careful to inquire and inform himself that the person
was in possession of and offering to sell the wagon was the George Tracy whos
and occupation were painted thereon; that Tracy's name and occupation were pu
wagon with the knowledge of O'Connor, the original plaintiff, and himself, an
direction of the former, for the purpose of creating the impression and induc
the public to believe that the property belonged to Tracy, and was being used
in his business as a piano mover. ...that the original plaintiff, for his ow
and benefit, was a party to the arrangement whereby Tracy's name was put on t
for the purpose of misleading the public into the belief that the property wa
and that defendant, acting with due caution and in good faith, was thus misle
to the ownership of the property, and purchased the same from Tracy. ..."

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Stees v. Leonard, in Vol. 20, Minnesota Reports, p. 494, (1874).

(Unforeseen circumstances complicating performance of a contract)

Plaintiffs Charles Leonard et al (and others) sued the architect company of Stees for not completing a three-story business house in accordance with pl specifications of the contract. The defendants maintained that they could fulfill their part of the contract because the plaintiffs had promised to d the land on which the house had been built before, but the house had collape The court ruled that there was not reason why the contract couldn't have be filled because the agreement with the plaintiffs was nudum pactum, that is, was a bare agreement, an agreement made without any money being promised to plaintiffs in consideration of draining the land.

Additional cases:

Public Issue Series Harvard Social Project - *Rights of the Accused.*

(Case study which centers on an automobile case; the issues involved on arr trial appeal, and constitutional law are also raised.)

____. *The Lawsuit.*

(A series of cases useful for the purpose)

Abt Associates have prepared a simulation, *Innocent Until,* related to the case described in *The Lawsuit.*

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Lexington, Mass. Ginn and Co. 1973.

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## UNDERSTANDING II

## PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO GUIDE AND COORDINATE THEIR ACTIVITIES.

### A. *Explanation of Understanding II*

A more sophisticated way of expressing this concept is to say that some law is a syst people to do things by providing useful guidelines for cooperation. A clearer way of formulat is to reflect on superhighways. Cars on American superhighways speed along at 70 m.p.h. in th lanes; cars on British superhighways speed along at 70 m.p.h. in the *left* hand lanes. How fas be able to go safely and efficiently on any superhighway if there were no law establishing dir traffic in superhighway lanes? Everyone would have to creep along at 2 m.p.h. dodging traffic other direction, if, indeed, they could move at all. Neither left nor right is any more just other, but if the law does not establish one or the other as the rule, no one will be able to either rapidly or safely.

This understanding, which looks at the need for the guidance of law, treats subjects familiar to students as crime. However, the coordinating-guiding-directing role is likely familiar, and is less likely to be perceived by the student even though the subject (e.g., tra is very familiar.

Fundamental societal needs in a modern, complex society go beyond processes for fair tion and protections of persons and property from bad acts. Needs such as public health, safe education, and coordination of commercial activities, to list only a few, call for some sort c trol to set standards and coordinate activity of large number of people living together; if we own thing" in acting in the absence of such standards, the result will be, at best, significant c inconvenience; at worst, massive chaos.

Perhaps the best way to approach the guidance of law function with students is to exa where law's guidance directly affects them. It is important to point out that here is a vast law that is only very misleadingly characterized as concerned primarily with discouraging bad these laws are not obeyed primarily in response to the threat of law (Understanding III). Fo we accept the guidance of law as meeting our needs for structured interaction without ever co we might be punished should we refuse the guidance. How many drivers ever would even think o wrong way on a superhighway even if there were no legal punishment whatever for doing so? Wh laws have a role in preventing drivers from doing bad things, their most important role is le drivers know what they should do.

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*nderstanding II*

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hey should do.

Module 1

## B. *Teaching Understanding II*

### OBJECTIVES

- The student may develop a perception of the law as a necessary guide to everyday ac reviewing situations around him in which guidance is needed for successful interact and by examining pertinent legal cases.
- Given pictures and case histories portraying situations in daily life, the student situations in which obedience of law is prompted more by recognition of need for st by fear of punishment.

### QUESTIONS TO REACH UNDERSTANDING

- What kinds of familiar activity would be less safe or more confused if law did not standards to provide guidance?
- Even if there were no people who would purposefully do harm to others if given a c a society like ours need some rules for standards and guidance in complex social in

### USE OF VISUALS

- Have some students view several films or film loops which portray oncoming traffic driver's perception point. (The driver education teacher may help you identify suc Students should list those situations in which drivers are bound by limits or stand law. They can then discuss with the class or another group of students what would each instance if no standards were set.
- Individual students or student committees can review the pictures on page 20 and d the class how each portrays a situation in which the people concerned accept the ne
- As a culminating activity, students may take photographs or draw caricatures to por showing the need of law to coordinate the activities of man's daily life.

*standing II*

nt may develop a perception of the law as a necessary guide to everyday actions by situations around him in which guidance is needed for successful interaction, amining pertinent legal cases.

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EACH UNDERSTANDING

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here were no people who would purposefully do harm to others if given a chance, why would like ours need some rules for standards and guidance in complex social interaction?

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DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURC

### Some laws that illustrate the guidance function of law in action.

(a) Discuss with class the need for rules of law that set standards and give directions concerning fire safety to the people who run public schools. (Before examining the State fire safety standards for schools, students might use the following role play: Have one student act as State school commissioner. He appoints a committee to draw up a recommended list of fire safety rules for schools.)

- Consider why we have these kinds of rules; what if we did not?
- Have a student committee investigate and report to the class on its school's compliance with selected fire regulations. The principal or vice principal is usually knowledgeable about these matters. So too, is the head custodian. They may be willing to be present, when the committee presents its report, to answer any additional questions pupils may have.

Throw open for discussion the question as to whether pupils would less likely obey laws if possible penalties did not exist and there was no threat of police action.

- Invite the local fire chief to discuss the question of enforcement of fire safety rules. (See pages 19-20.)

Resources concerning the need for la
function may lack the degree of inhe
students that is enjoyed by material
flict and need for its fair resoluti
ing I) or materials concerning the n
tion of crimes (Understanding III).
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be met by emphasis on active student
in the design and development of the
a student committee to investigate c
standards).

A caution at this juncture: In this
necessity for law is unfolded by a t
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and *threat* of law. Law's function i
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The three significant needs for law
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OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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rules. (See pages 19-20.)

Resources concerning the need for law's guidance function may lack the degree of inherent appeal to students that is enjoyed by materials concerning conflict and need for its fair resolution (Understanding I) or materials concerning the need for prevention of crimes (Understanding III). Thus, choice and presentation of classroom material in Understanding II presents a particular challenge which might be met by emphasis on active student participation in the design and development of the content (e.g., a student committee to investigate conformity to fire standards).

A caution at this juncture: In this module, the necessity for law is unfolded by a threefold conceptual scheme—needs for *dispute settling*, *guidance*, and *threat* of law. Law's function in meeting these three needs is treated in separate understandings. This approach is not intended to suggest there is no overlap in the three "types" of law. For example, a law saying we must keep to one side while driving primarily functions to give guidance in safe and efficient travel. However, law's process may sometimes *secondarily* be called on to resolve disputes over conformity to this guidance. Or law's threat of penal action may *secondarily* join with the perception of mutual advantage that leads people to accept law's guidance in regard to driving on the right.

The three significant needs for law are treated separately. Students will probably notice that these needs are not mutually exclusive. However,

## DETAILED DESCRIPTION OF STRATEGIES

(b) Examine the need for and function of laws regulating standard time.

- —Look at the New York law which requires all business of public officers in the state to be performed under the same scheme for telling time.
- —Have the class discuss why we have these kinds of rules.
- —Have some of the pupils in class design a hypothetical problem that might arise if officials of each town, city, or county went about conducting business according to daylight or standard time as they saw fit. (See page 22.)

(c) Discuss with pupils the need for and function of laws regulating conservation of natural resources and wildlife. (In this and each of the following areas of guidance and regulation, one or more activities might be used if time permits:

1) Examine appropriate statutes;
2) discuss why these laws and regulations exist;
3) design hypothetical problems in each area; and
4) invite speakers or take field trips for more indepth study.

Since the problems connected with pollution today are very much in the limelight, the pupils should enjoy this particular topic. (See pages 22-23.)

## DISCUSSION OF STRATEGIES AND RESOU

acknowledgement of this fact shoul
development of the understanding t
settling, guidance, and threat of
sary functions of law.

In using any of the suggested proc
sources to unfold the need for the
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For example, in using the New York
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> In this state Ed Smith and Jo
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> Smith's car broadside. Trial
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## OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

acknowledgement of this fact should not impair development of the understanding that dispute settling, guidance, and threat of law are each necessary functions of law.

In using any of the suggested procedures and resources to unfold the need for the guidance and direction of law, initial inquiry might consider what would happen if we had no laws giving guidance on such subjects. Such laws are obeyed mainly due to people's perception that conformity is mutually advantageous. Because people just accept such laws, students may question whether they are really *necessary*. But the assumption that laws are unnecessary whenever they are generally accepted without a legal threat is misconceived. Without legal guidance, people would often not know what to do. The teacher might deal with this assumption by constructing a concrete hypothetical situation which presents the need for a law that is simply accepted without the potential threat of law's punishment.

For example, in using the New York State law specifying when Eastern Standard Time and when Daylight Saving Time shall be in force across the state, the teacher could post this hypothetical case:

> A given state has no law like that of New York so that each county or town follows standard or daylight time as it sees fit. In this state Ed Smith and John Jones have had an auto accident. Smith has sued Jones in Thompson County where the accident occurred, claiming Jones ran a light and hit Smith's car broadside. Trial has been set in Thompson County for 1 p.m. Tompkins

## DETAILED DESCRIPTION OF STRATEGIES

(d) Discuss with pupils the need for and function of laws providing for traffic control devices and signs:

—Observe an intersection with a stop sign. Without police present, do most people stop?

—Have a group of pupils in class design a questionnaire asking drivers if they would observe traffic signs and devices if they knew they wouldn't be caught. Then have all pupils fill out questionnaire and, in turn, take one home and have parents fill out. It might be interesting to compare parent vs. pupil response. (See pages 23-24.)

(e) Examine the need for and function of laws setting minimum safety and sanitation standards for building construction. Throw open for class discussion the following questions:

What would our school be like if there were no safety and sanitation standards?

Would your home, the local movie theaters and businesses be any different without standards?

(See page 26.)

(f) Examine need for and function of laws specifying qualifications for public school teachers. Have class make comparison with the colonial school teacher. (See page 27.)

## DISCUSSION OF STRATEGIES AND RESOURCES

County is on daylight time. Jones
from Browne County which is on st
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Once students begin to perceive the ne
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DISCUSSION OF STRATEGIES AND RESOURCES

> County is on daylight time. Jones is from Browne County which is on standard time. Jones shows up to defend himself at what he thinks is 1 p.m., but the Judge is not there. The bailiff explains to Jones, "You've already lost; you are an hour late. The Judge gave Smith a judgment for $10,000 Smith claimed was necessary to pay his doctor and repair bills. The Judge asked if you had been notified of this suit and concluded, since you had and didn't show, you did not wish to contest this case..."

Once students begin to perceive the need for directive laws, it may be effective to have them construct stories of what might happen in a given area if there were no laws for direction, guidance, coordination, or standard setting. Role playing might also be used to illustrate disputes caused by the lack of guidance by law.

The above listed procedures and resources may suggest to the teacher some of the kinds of areas that might be examined to reveal the need for law's guidance, direction, and coordination. The teacher might chose from these or select a subject area of particular interest to a given group of students. In any case the same sort of inquiry as outlined in more detail under the initial two procedures for Understanding II would be appropriate.

An alternative technique to the selection of one or two demonstrative subject areas to teach Understanding II would be to present several such areas on a

## DETAILED DESCRIPTION OF STRATEGIES

(g) Examine need for and function of laws requiring that certain subjects be taught in the public school curriculum. (See page 27.)

(h) Examine need for and function of laws setting standards regarding air and water pollution. (See page 28.)

A cartoon has been omitted here because of copyright restrictions. It is from the April 11, 1970 Saturday Review, and was drawn by Cliff Roberts.

Caption:

"The neighbors don't like it."

Copyright April 11, 1970 by Saturday Review, Inc.
Used by permission of Cliff Roberts.

See text p. 16.

## DISCUSSION OF STRATEGIES AND RESO

time-line. After basic notions o
capacity are conveyed to students,
draw a time-line for 1 day in an
life on the board. The time-line
with student suggestions as to ar
might come in contact with law's
example, breakfast cereal meets p
bus drivers qualify to hold speci
morning traffic is coordinated by
devices; school starts at 8:30 a.
qualified teachers offer directed
drills are held according to safe
ing is regulated according to con
TV programs broadcast according t
waves, etc. After identifying su
should consider why laws about th
such laws are necessary, and why
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TION OF STRATEGIES

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11, 1970 by Saturday Review, Inc.
on of Cliff Roberts.

DISCUSSION OF STRATEGIES AND RESOURCES

time-line. After basic notions of law's guidance capacity are conveyed to students, the teacher might draw a time-line for 1 day in an eighth grader's life on the board. The time-line could be filled in with student suggestions as to areas where a student might come in contact with law's guidance role. For example, breakfast cereal meets pure food standards; bus drivers qualify to hold special driver's licenses; morning traffic is coordinated by traffic control devices; school starts at 8:30 a.m. standard time; qualified teachers offer directed curriculum; fire drills are held according to safety standards; hunting is regulated according to conservation standards; TV programs broadcast according to regulation of air waves, etc. After identifying such subjects, students should consider why laws about these areas exist, if such laws are necessary, and why such laws are generally obeyed.

A cartoon has been omitted here because of copyright restrictions. It is from the May 4, 1963 Saturday Review.

See text, p. 16.

# RESOURCES*

McKinney's Consolidated Laws of New York - "Education Law." Book 16.

(Fire safety standards for schools)

> "It shall be the duty of the commissioner of education, in the case of public schools, and director of the division of fire safety, in the case of private schools, to ascertain annually whether the inspection of school buildings req by this section have been made and the reports of the inspection have been fi in their respective offices. The commissioner of education in the case of pu schools and the direction of the division of fire safety in the case of priva schools shall review the reports of inspection filed pursuant to this section may make recommendations to the school authorities with respect to any proble relating to school fire safety noted in such reports. The commissioner of ed in the case of public schools may inspect or cause to be inspected at any rea time for fire prevention and fire protection purposes the school buildings re to be inspected. ..."

New York Official Compilation of Codes, Rules and Regulations - "Regulations of th Commissioner." Vol. 8, Education, Chapter II, (selected sections).

Section 155.3

There shall be at least two means of egress remote from each other leading fro each floor of pupil occupancy for all school buildings...

Exit doors shall not be locked, chained, or otherwise rendered inoperative fro the inside at any time...

Corridors and passageways shall be kept clear at all times...

Fire extinguishers shall be so located in corridors and in areas of unusual hazard that no point in such area or corridor is more than 100 feet from a fi extinguisher.

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*Direct quotations from statutes are indicated by the use of quotation marks. Ot statements are summaries or paraphrases of the statute listed.

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McKinney's Consolidated Laws of New York - "General Construction Law." Book 21,

(Regulating standard time)

"The standard time throughout this state is that of the seventy-fifth meridi
longitude west from Greenwich, and all courts and public officers and legal
official proceedings shall be regulated thereby."

McKinney's Consolidated Laws of New York - "Conservation Law." Book 10.

(Conservation regulations and guidance)

The following is one of a variety and number of laws regulating natural res
and wildlife in New York State:

"Misdemeanors under any section of the Fish and Game Law involving the illeg
taking of a deer prior to the first day of the open season or after the last
of the open season in the county where taken, or involving the illegal takin
a doe deer or involving the taking of a deer by the aid of an artificial lig
punishable as follows:

a) for a first conviction by imprisonment for more than one year or by a
of not less than one hundred dollars nor more than five hundred dollar
such fine and imprisonment

b) for a second conviction within five years of a first conviction for su
offenses, by imprisonment for not more than one year or by a fine of n
less than three hundred dollars or by both such fine and imprisonment

c) for a third or subsequent conviction within five years of the first of
or more previous convictions for such offenses, by imprisonment for no
than one year or by a fine of not less than five hundred dollars nor m
than fifteen hundred dollars or by both such fine and imprisonment..."

's Consolidated Laws of New York - "General Construction Law." Book 21, Section 52.

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the open season in the county where taken, or involving the illegal taking of
oe deer or involving the taking of a deer by the aid of an artificial light are
ishable as follows:

a) for a first conviction by imprisonment for more than one year or by a fine
of not less than one hundred dollars nor more than five hundred dollars or both
such fine and imprisonment

b) for a second conviction within five years of a first conviction for such
offenses, by imprisonment for not more than one year or by a fine of not
less than three hundred dollars or by both such fine and imprisonment

c) for a third or subsequent conviction within five years of the first of two
or more previous convictions for such offenses, by imprisonment for not more
than one year or by a fine of not less than five hundred dollars nor more
than fifteen hundred dollars or by both such fine and imprisonment..."

New York Official Compilation of Codes, Rules and Regulations - "Conservation." V

--set up rules and regulations regarding natural resources and wild life in N
York State, e.g., a) stipulation when and in what areas deer may be hunted --
number of permits to be issued for each section of the state; b) trapping sea
regulations; c) fishing regulations (even to include the size of trout in cer
counties) -- trout not less than six inches in length may be taken during the
season provided in the waters situated within the Counties of Clinton, Essex,
Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Oswego, Sara
St. Lawrence, Warren and Washington.

McKinney's Consolidated Laws of New York - "Vehicle and Traffic Law." Book 62A.

(Traffic control guidance)

The following constitute excerpts from the many hundreds of rules and regula
set up by the state of New York:

"No person shall stand in a roadway for the purpose of soliciting a ride or
solicit or sell to an occupant of any vehicle."

"No person driving or in charge of a motor vehicle shall permit it to stand
attended without first stopping the engine, locking the ignition, removing t
key from the vehicle and effectively setting the brake and when standing upo
grade, turning the front wheels to the curb or side of the highway, provided
however the provision for removing the key from the vehicle shall not requir
the removal of keys hidden from sight about the vehicle for convenience or
emergency."

"No person shall drive across or upon a sidewalk, driveway, parking lot or
private property or otherwise drive off a roadway in order to avoid an inte
section or traffic."

rk Official Compilation of Codes, Rules and Regulations - "Conservation." Vol. 6.

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'No person shall drive across or upon a sidewalk, driveway, parking lot or rivate property or otherwise drive off a roadway in order to avoid an intersection or traffic."

New York Official Compilation of Codes, Rules and Regulations - "Motor Vehicle

--rules and regulations of the state motor vehicle division which deal in detail with all aspects connected with the operation of a motor vehicle e directly or indirectly; e.g., drivers' license, license registration, equ in car itself, point system and departmental driver improvement clinics, a uniform traffic control devices.

Specific examples:

Tail lamps or lamps and reflectors - All 1952 and earlier model vehicle have at least one lamp on the rear which shall display a red light. Al and later must have at least two lamps, one on each side which shall di red light. All vehicles must have at least one red reflector on the re

Horn - All motor vehicles must be equipped with a horn in good working such horn shall not be unnecessarily loud or harsh.

McKinney's Consolidated Laws of New York - "Public Health Law." Book 44.

(Standards for sanitation and building)

The following is only a brief excerpt from many rules and regulations of of New York to maintain better sanitary and health conditions in either p or public domain:

"Every hotel shall furnish each guest with clean linen or cotton individu in each room occupied by such guest and also in the public lavatories and of such hotel and with clean sheet and pillow slips for the bed, bunk or occupied by such guest.

"...Each sheet shall be ninety-one inches long, minimum length after bein and laundered and of sufficient width to completely cover mattress and sp ...all sheets and pillow slip must be laundered and ironed before being f to the next guest.

rk Official Compilation of Codes, Rules and Regulations - "Motor Vehicles." Book 15(A).

-rules and regulations of the state motor vehicle division which deal in great etail with all aspects connected with the operation of a motor vehicle either irectly or indirectly; e.g., drivers' license, license registration, equipment n car itself, point system and departmental driver improvement clinics, and niform traffic control devices.

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...Each sheet shall be ninety-one inches long, minimum length after being hemmed nd laundered and of sufficient width to completely cover mattress and spring and ..all sheets and pillow slip must be laundered and ironed before being furnished o the next guest.

> "It shall be unlawful to furnish or serve in any public eating or drinking est ment any straw, tube or similar device for drinking out of glasses, cups or co of any type unless such drinking devices are...completely enclosed in a wrappe keep out bacteria or, if unwrapped in a sanitary dispenser. ...no single serv paper containers, cups, spoons may be re-used... ."

New York Official Compilation of Codes, Rules and Regulations - "State Sanitation C Vol. 10(A) Health, Part 1.

--State has set forth an all-encompassing series of rules, codes, and regulatio as far as maintaining good health conditions is concerned -- ranging from are as communicable diseases, swimming pools, barber and beauty shops, maternal a health, migrant labor camps to transportation of dead bodies.

Some specific examples would include regulations relating to beauty and barbe

Sanitation of equipment and implements:

a) Hair brushes, combs, and all other implements used on a customer must be k clean and sanitary at all times and shall undergo thorough cleansing afte serving each customer

b) After handling a customer affected with an eruption, or whose skin is bro out or is inflamed, the instruments shall be effectively cleaned then rin with water having a temperature of at least 170 degrees Farenheit or allo to remain for five minutes in alcohol (70 percent - 80 percent) or some equally efficient disinfectant.

The use of shaving brushes, mugs, and finger bowls is prohibited. The us finger bowls is prohibited unless a separate sanitary inner paper liner o cup is used for each customer and discarded immediately after use.

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any straw, tube or similar device for drinking out of glasses, cups or containers
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McKinney's Consolidated Laws of New York - "Executive" Article 375 - "State Buildi
Book 18.

> "The state building construction code shall be designed to effectuate the ge
> purposes of this article and the specific objectives and standards hereinaft
> forth:
>
> 1) To provide reasonably uniform standards and requirements for constructio
> construction materials, in tune with accepted standards of engineering a
> prevention practices
>
> 2) To set up standards and requirements so that adequate performance result
>
> 3) To permit use of modern technical methods, devices and improvements to r
> the cost of construction and yet not sacrifice the reasonable requiremen
> the health, safety and security of the occupants or users of buildings
>
> 4) To encourage, within reason, the standardization of construction practic
> methods, equipment, materials and techniques
>
> 5) To eliminate restrictive, obsolete, conflicting and unnecessary building
> regulations and requirements which tend to increase unnecessarily constr
> costs or prevent the use of new materials or give unwarranted preferenti
> treatment to types or classes of materials or products or methods of con

New York Official Compilation of Codes, Rules and Regulations - "Executive" - "Bu
Construction Code." Vol. 9, Part 600, Chapter 1.

> --the state sets up some very definitive regulations regarding new and exist
> buildings as far as space, structural, fire safety and equipment requirement
> e.g., "Landings - The swing of a door opening on a stairway shall not overla
> top step. Where landings are provided for, their width shall not be less th
> the width of the stair of which they are part."

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3) To permit use of modern technical methods, devices and improvements to reduce the cost of construction and yet not sacrifice the reasonable requirements for the health, safety and security of the occupants or users of buildings
4) To encourage, within reason, the standardization of construction practices, methods, equipment, materials and techniques
5) To eliminate restrictive, obsolete, conflicting and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or prevent the use of new materials or give unwarranted preferential treatment to types or classes of materials or products or methods of construction."

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Module 1

McKinney's Consolidated Laws of New York - "Education Law." Book 16.

(Guidance in qualifying public school teachers)

Qualifications of teachers

No person shall be employed or authorized to teach in the public schools of
state who is:

1) Under the age of 18 years
2) Not in possession of a teacher's certificate issued under the authority
this chapter or a diploma issued on the completion of a course in a sta
college for teachers or state teachers college of this state
3) Not a citizen. The provisions of this subdivision shall not apply, howe
to an alien teacher now or hereafter employed provided such teacher sha
make due application to become a citizen, and within the time prescribed
law shall become a citizen.

McKinney's Consolidated Laws of New York - "Education Law." - Book 16.

(Curriculum guidance standards)

According to rules and regulations set up by the state of New York, certain s
are to be taught to all pupils over 8 years of age. This includes the follow

"...courses of instruction in patriotism and citizenship and in the history, m
significance and effect of the provisions of the Constitution of the United S
the amendments, the declaration of independence, the constitution of the stat
New York.

"...courses of instruction in physical education so designed to aid in the w
education of pupils and in the development of character, citizenship, physica
health and the worthy use of leisure

"...nature of alcoholic drinks and their effect on the human system shall be
in connection with various divisions of physiology and hygiene

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According to rules and regulations set up by the state of New York, certain subjects are to be taught to all pupils over 8 years of age. This includes the following:

"...courses of instruction in patriotism and citizenship and in the history, meaning, significance and effect of the provisions of the Constitution of the United States, the amendments, the declaration of independence, the constitution of the state of New York.

"...courses of instruction in physical education so designed to aid in the well-rounded education of pupils and in the development of character, citizenship, physical fitness, health and the worthy use of leisure

"...nature of alcoholic drinks and their effect on the human system shall be taught in connection with various divisions of physiology and hygiene

"...courses of study beyond the first full eight years of school shall provide instruction on the nature and effects on the human system of narcotics and hab forming drugs

"...courses of instruction are prescribed in highway safety and traffic regula

Air Quality Control Act, in United States Code, Title 42 - "The Public Health and W Chapter IV.

(Air and water pollution guidance standards)

The above resource explains how the Environmental Protection Agency of the Fed Government has given subsidies for air pollution control programs and solid wa disposal projects.

Specific details are also delineated for the manufacture and use of a smoke in guide.

The Federal Government also pledge, through set activities, to prevent, contr abate air pollution from any of its Federal buildings by means of certain perf standards and techniques of measurement.

All companies must register any fuel additives that they begin to use.

Finally, all air quality control regions and control techniques are listed.

Water Quality Act in United States Code, Title 33 - "Navigation and Navigable Water Parts 1 to end.

Again, the Federal government has set very definite standards and practices re waterways all around the United States which directly or indirectly will affec prevention of pollution; e.g., Limits for Fish Pounds and Traps on Atlantic Co Norfolk District Bays and Estuaries; Areas Available for Fish Traps--New Engla

Specific limits and boundaries of dumping areas only with permission of distri engineer; definite specifications as far as quantities of release of water fr specific reservoirs. Flood control regulation in various sections of country.

Additional Resources

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* U Chapter II. "Our laws and legal processes -- Do we need them?" Lexington, Mas and Co. 1973. (Includes examples of "guidance laws" and treats this type of

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Specific limits and boundaries of dumping areas only with permission of district engineer; definite specifications as far as quantities of release of water from specific reservoirs. Flood control regulation in various sections of country.

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## UNDERSTANDING III

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS
AND THEFTS.

A. *Explanation of Understanding III*

This understanding, which looks at the need for the threat of law, treats aspects o
subject—crime. The teacher can direct students to this need for law by first having them ex
sons for having *rules* concerning actions like rape, assault, theft, murder, and arson; i.e. s
tion of persons and property from "bad actors." Then an inquiry into whether the security of p
property could be effectively attained by rules alone, with some *means of coercively policing*
of those rules, should bring the student to the need for the effective threat of law. Nonle
social control, such as personal morality, custom, religion, or perception of mutual advantag
aggressive antisocial acts of most men. However, it is doubtful that in any large modern so
forces alone, without the coercive threat of law, could preserve a satisfactory degree of perso
At least no such society has ever been known.

B. *Teaching Understanding III*

OBJECTIVES

- Given examples of law codes in earlier periods in history, the student may classify
wrongdoings for which society considered the threat of punishment necessary as a de
- The student may demonstrate understanding of the effectiveness of threat by listing
punishment which society considers adequate to prevent wrongdoing.

QUESTIONS TO REACH UNDERSTANDINGS

- Why do we need laws that prohibit and punish certain acts?
- Why is the role of a police force important to a legal system?
- If there were no people who would purposefully do harm to others given a chance, w
prohibition and punishment be necessary?

III

IVING IN A MODERN SOCIETY NEED LAW TO DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS
TS.

*of Understanding III*

nderstanding, which looks at the need for the threat of law, treats aspects of a familiar The teacher can direct students to this need for law by first having them examine the rea- *rules* concerning actions like rape, assault, theft, murder, and arson; i.e. securing protec- and property from "bad actors." Then an inquiry into whether the security of persons and e effectively attained by rules alone, with some *means of coercively policing the enforcement* should bring the student to the need for the effective threat of law. Nonlegal forces of such as personal morality, custom, religion, or perception of mutual advantage, work to deter ocial acts of most men. However, it is doubtful that in any large modern society these thout the coercive threat of law, could preserve a satisfactory degree of personal security. society has ever been known.

*lerstanding III*

examples of law codes in earlier periods in history, the student may classify types of oings for which society considered the threat of punishment necessary as a deterrent.

udent may demonstrate understanding of the effectiveness of threat by listing types of ment which society considers adequate to prevent wrongdoing.

REACH UNDERSTANDINGS

we need laws that prohibit and punish certain acts?

the role of a police force important to a legal system?

re were no people who would purposefully do harm to others given a chance, would criminal ition and punishment be necessary?

Module 1

## USE OF VISUALS

- Students may collect newspaper pictures which illustrate the threat of the law as a to wrongdoing. These may then be analyzed as the effectiveness of the threat.
- Television dramas frequently focus upon crime or attempts to prevent crime. Such e may be reported by students, and then discussed, as to how representative of real l situations they are.
- Compare the effectiveness of the threat implied in the pictures below and on page 3

A cartoon has been omitted here because of copyright restrictions. It is from The New Yorker Magazine, Inc. 1971, and was drawn by Weber.

Drawing by Weber; © 1971 The New Yorker Magazine, Inc.

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DETAILED DESCRIPTION OF STRATEGIES

## 1. Need for rules prohibiting antisocial conduct.

(a) Consider with your class the effect criminal activity has on personal security.

- Have students list all crimes that could be committed in and around school.
- Have students check local newspapers and TV to report on crime in the community.
- Have a group of students interview local police officials about local crime rates.

(b) Locate or identify rules concerning security of persons and property.

- What are some nonlegal sources of such rules (church, family, personal morality, etc.) serving to discourage criminal activity? (See page 35.)
- Examine with the class, selections from the New York Penal Law describing certain crimes (e.g., murder, larceny, rape, etc.). Pass out selections cited, and have roundtable discussion with pupils as to the fairness of the descriptions, in their estimation. (See page 35.)
- Examine some criminal laws through history (e.g., Code of Hammurabi, Ancient Greece and Rome, a medieval

DISCUSSION OF STRATEGIES AND RESOURCE

Teaching Understanding III (need for
and enforcement machinery) is concept
step process. First, students should
importance of simply having some rule
certain antisocial activity. Parado
most fundamental freedoms of physical
persons and property presuppose restr
prohibition of certain activity. But
second conceptual step--mere prohibit
laws) is not enough. There is also n
machinery that poses a threat to thos
purposefully interfere with others.

Here, unlike dispute-settling law (Und
guidance law (Understanding II), the t
of primary significance. Here, also
settling or guidance law, society wou
kind of law if society had no men inc
advantage of others given the opport

Dispute-settling and guidance laws fo
perform their necessary functions as
ily submit disputes to rational proce
tion and accept direction in social i
Law's coercive threat is only seconda
to help enforce civil judgments; the
school official who disregards fire s
However, to the extent society consis
are willing to respect the rights of
criminal law is in large part superfl
antisocial element of society that c
for criminal law into play. And this
factorily help meet the need to prote

PTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Need for rules prohibiting antisocial conduct.

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Teaching Understanding III (need for criminal laws and enforcement machinery) is conceptually a two-step process. First, students should consider the importance of simply having some rules prohibiting certain antisocial activity. Paradoxically, the most fundamental freedoms of physical security of persons and property presuppose restriction and prohibition of certain activity. But there is a second conceptual step--mere prohibition (criminal laws) is not enough. There is also need for coercive machinery that poses a threat to those who would purposefully interfere with others.

Here, unlike dispute-settling law (Understanding I) or guidance law (Understanding II), the threat of law is of primary significance. Here, also unlike dispute-settling or guidance law, society would not need this kind of law if society had no men inclined to take advantage of others given the opportunity.

Dispute-settling and guidance laws for the most part perform their necessary functions as people voluntarily submit disputes to rational processes for resolution and accept direction in social interaction. Law's coercive threat is only secondary (the sheriff to help enforce civil judgments; the sanction for the school official who disregards fire safety standards). However, to the extent society consists of men who are willing to respect the rights of others, the criminal law is in large part superfluous. It is the antisocial element of society that calls the need for criminal law into play. And this law can satisfactorily help meet the need to protect others by

DETAILED DESCRIPTION OF STRATEGIES

society). In possible classroom discussion, pose the question as to whether these "laws" could work in 20th century America: Do strains of these codes exist in any segment of our society today?

2. Need for the coercive threat of law.

(a) Examine with pupils state statutes and local ordinances providing for the establishment of police forces. Consider these areas:

—What need is being met by such organizations?

DISCUSSION OF STRATEGIES AND RESOURC

preventing antisocial acts *only* if coercive force to threaten and dete "bad actors."

Students are well aware of the exist laws. Initial materials (consideri could be committed around school an coverage of criminal activity) are cedures to direct students to the n prohibitions of criminal law exist reason--to protect persons and prop

Certainly everyone is not inclined acts. Examination of nonlegal rule official sanctions) may help explai bitions of criminal laws are not di members of society, most of the tim

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preventing antisocial acts *only* if it is backed by coercive force to threaten and deter activities of "bad actors."

Students are well aware of the existence of criminal laws. Initial materials (considering crimes that could be committed around school and local news coverage of criminal activity) are suggested as procedures to direct students to the notion that the prohibitions of criminal law exist for an affirmative reason--to protect persons and property.

Certainly everyone is not inclined toward criminal acts. Examination of nonlegal rules (rules without official sanctions) may help explain why the prohibitions of criminal laws are not directed at most members of society, most of the time.

The fundamental reason for criminal laws might be treated by examining some actual criminal laws in history. This section might conclude with students reading some current criminal statutes of interest. If such statutes are presented they will need substantial teacher editing.

2. Need for the coercive threat of law.

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The last four suggested procedures concern the need for coercive machinery to back up law's prohibition. From this perspective, the necessity for an official police force is presented. Here, students may be interested in seeing the actual laws that provide for establishment of police forces and outline their duties. It might be pointed out to students how

## DETAILED DESCRIPTION OF STRATEGIES

—What are some alternatives to filling this need with an official police force (e.g., national police force or army, local vigilante group, self-policing)? (See pages 39-40.)

(b) Assign a research project where pupils might examine problems in a community on the "lawless" western frontier. In their project, they should discuss recent films and TV programs which have handled this topic. (See page 41.)

(c) Have pupils write a TV program depicting what might happen in each of the following situations:

—What might happen if your town police force went out on strike.

—Suppose that all enforcement of school rules and laws of any kind are suspended at your school; examine the possible consequences. (See pages 40-41.)

(d) Have pupils conduct a debate on this topic: schools need fewer rules but *more* enforcement of these rules. Pupils should do preliminary research before tackling the class debate. (See page 40.)

## DISCUSSION OF STRATEGIES AND RESOURC

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threatening in function. It might a
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## DISCUSSION OF STRATEGIES AND RESOURCES

those particular laws are guiding rather than threatening in function. It might also be of interest to consider the role that police play in aspects of law other than penal law: police roles in arbitrating neighborhood disputes and guiding the flow of traffic are familiar. The police help meet social needs beyond threatening potential criminals and pursuing actual ones.

The importance of effective coercive machinery of laws might be best conveyed with case studies hypothesizing its absence. From this perspective, students might study some examples of law on the western frontier of the 1800's. Alternatively, they might consider probable results if all enforcement machinery was removed from the school or community.

An alternative approach to presenting Understanding III might be to work through the procedures in reverse order. The teacher could begin by positing a town or school, first with no rules proscribing hurtful acts, and second, with such rules but without any coercive machinery to police such rules. After considering the need such circumstances would demonstrate for penal laws and enforcement machinery, students might consider some criminal laws today and in history.

(e) Show your class a film on the need for law. Discuss this question: Does the film examine the need for law from a different perspective than this module? (Check your local library or film center for possible titles.) One possibility is "An Imaginary They" which explores the need for rules and laws and shows who makes them.

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of Los Angeles Times Syndicate."

PTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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## RESOURCES*

The Bible - Deuteronomy. Chapters 5-11.

(Use any translation or quoted passages in any western civilization book of readings.)

Codes of the Boy and Girl Scouts of America.

McKinney's Consolidated Laws of New York - "Penal Law." Book 39.

The following are key examples from New York Penal Law describing certain cr

A. Murder (Class A Felony)

A person is guilty of murder in the following instances:

1) when with intent to cause the death of another person he causes the death of such person or of a third person
2) when he recklessly engages in conduct which creates a grave risk of death to someone else and results in the death of another person
3) when he either acts alone or with the company of others to commit burglary, robbery, kidnapping, etc. and in the process causes the death of someone other than the participants
(Extenuating circumstances such as extreme emotional disturbance, whether accused was armed, whether there was deliberation [premeditation] could enter into degree of plea of defendant as of murder or possibly a lesser charge of manslaughter.)

B. Larceny

A person commits larceny when he wrongfully takes or withholds another's property in any of the following ways:

1) by trickery, embezzlement, or obtaining property by false pretenses
2) by acquiring lost property that he knows has been wrongfully taken another
3) by issuing a bad check

*Direct quotations from statutes are indicated by the use of quotation marks. Ot statements are summaries or paraphrases of the statute listed.

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4) by falsely promising to perform certain services as a result of receiving certain property
5) by extortion; i.e., forcing a person to hand over certain property th instilling fear in that party by threatening certain actions such as:
    (a) causing damage to his property
    (b) causing physical harm to the individual
    (c) by accusing the person of a crime or threatening to bring crimin charges against him
    (d) by threatening to expose some secret or certain facts about an individual which will result in hatred, ridicule, or contempt of that individual
    (e) by causing a strike, boycott, or other group labor action which might be injurious to that person's business

C. Kidnapping (Class A Felony)

(a) First Degree Kidnapping
A person is guilty of this type of kidnapping when he abducts anot person and his reasons and resulting actions might be the followi

1) main purpose to force a third party to pay or deliver ransom o property of some sort
2) he represses the person he has kidnapped for more than 12 hours with intent to:
    (a) cause him physical injury or abuse him sexually
    (b) carry out a felony
    (c) frighten him or a third party
    (d) in some way interfere with the accomplishment of a governm or political function
3) The party that was kidnapped dies before he is returned or is to return to safety

(b) Second Degree Kidnapping
A person is guilty of kidnapping in the second degree when he abdu another person
[The theory behind this new degree structure is that although a pe is just as culpable in this particular instance, it is not quite

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(b) Second Degree Kidnapping

A person is guilty of kidnapping in the second degree when he abducts another person

[The theory behind this new degree structure is that although a person is just as culpable in this particular instance, it is not quite as

heinous as the behavior exhibited in first degree kidnapping. Some examples that would be indicative of second-degree kidnapping are:
1) a childless woman stealing an infant from a hospital nursery because of her desire to have a baby of her own
2) putting out of circulation for awhile a security officer in a business place by threats of violence until a robbery has been committed
3) confining a young woman for a number of hours in a hidden place so that she will not be able to get married.]

Nice, Richard, W. Treasury of Law. Philosophical Library. 1964.

(Text modified for easier reading.)

Code of Hammurabi

The only thoroughly complete pre-Hebrew code of law was that compiled by the King of Babylonia, Hammurabi, about the year 2100 B.C. Some excerpts from thi code include:

"...If a man has accused a man and has charged him with manslaughter and and then has not proved (it against) him, his accuser shall be put to death."

"...If a man has come forward in a case to bear witness to a felony and ther has not proved the statement that he has made, if that case (is) a capital o that man shall be put to death."

"...If a man kidnaps the infant (son) of a (free) man he shall be put to dea

Ancient Rome: Laws of the Twelve Tables

The Twelve Tables constitute the earliest Roman code of laws. They were drawn in 451-450 B.C. and published in the Roman Forum on tablets of bronze or wood.

"Law III - Parents shall have the right to sell their children thrice and th shall be their authority."

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"Law XL - The dead shall not be burned or cremated within the city."

"Law XXVI - If a man does wrong to another, the penalty shall be twenty-five pieces of money."

"Law XXIII - If a four-footed animal causes damage, there shall be an acti at law against the owner of that animal."

A more complete quotation can be found in Eisen and Filler, The Human Adventure Vol. I, pp. 19-20; and in Fenton, 32 Problems in World History, pp. 22-24. See also: The Justinian Code: Good, The Shaping of Western Society, pp. 48-50 The Law of the Twelve Tables, The Human Adventure, Vol. I, pp. 58-61.

McKinney's Consolidated Laws of New York - "Executive Law" - "Division of State P Book 18, Article 11.

According to Executive Law of 1902 the Division of State Police was set up.

"The division of state police in the executive department shall be known as the 'New York State Police'. The head of the New York State Police shall be the superintendent of state police who shall be appointed by the governor by and with the advice and consent of the senate and hold office during his ple The superintendent shall receive as salary such sum as may be appropriated b If, prior to his appointment, the superintendent shall have served as a memb of the State Police for a period of ten years or more, he shall, provided he not eligible for retirement, upon termination of his service as superintende reappointed, without examination, as a member of the state police in the gra held by him prior to his appointment as superintendent notwithstanding the a of any vacancy in such grade. For the purpose of determining the annual sal to be paid upon such reappointment the period of service as superintendent s be counted as service in the grade to which reappointed."

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Module 1

*McKinney's Consolidated Laws of New York* - "Unconsolidated Laws" - Town Police Dep
Book 65, Chapter 11.

The above source has clearly stated the regulations set up by the state of Ne
for a chief of police in setting up his town force.

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shall not assign any patrolman who may be on duty in the open air, on the st
or other public place to more than one tour of duty; such tour of duty shall
exceed eight consecutive hours of each consecutive twenty-four hours; except
emergency...or for the purpose of changing tours of duty. ...Each uniformed
after having served one year in the police force shall be allowed an annual
of not less than fourteen consecutive days..."

Clark, Gerald. "What Happens When the Police Strike." *New York Times Magazine*. November 16, 1969. pp. 45, 176.

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carried...the report that police were to meet at 9:00 A.M. to hear the resul
of an arbitration board's findings on wages and other issues that had remain
unsettled for almost a year. But no one had anticipated a walkout; it was
illegal for policemen and firefighters to strike.

"Thus, on Oct. 7, the largest city in Canada and one of the most civilized
cities in the world, found what it was like to be without police protection
during a day and a night. Before it was over, a psychologist would shoot an
kill a burglar; another man--a provincial police corporal--would be slain;
and 49 persons would be wounded or injured in rioting. Nine bank holdups;
almost a tenth of the total for the whole of last year, would be committed
along with 17 other robberies at gunpoint.

"Ordinarily disciplined, peaceful citizens would go wild, smashing 1,000 pl
glass windows in the heart of the city and looting shop displays. The loss
and damage would exceed $1 million.

"Essentially it was not the rise in profession crime--12 times the normal--
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"One Touch of Anarchy." *Newsweek*. Vol. 74. October 20, 1969. p. 71.

Another description of the 1-day strike by the Montreal policemen and firemen of the resultant rioting and looting. A taxi-cab driver's remark points out very well the disastrous consequences that can result when law and order forc are nonexistent--"I mean just plain people committed offenses they would not dream of trying if there was a policeman standing on the corner."

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"They May Sue." Editorial in the *Schenectady Gazette*. August 28, 1972. p. 26.

"Let us say you leave the key in your car and the car is stolen and the thief injures somebody with your car. You think you're exempt from responsibility for harm done to that third party? Not in New Jersey. A state appeals court in Trenton ruled that the car owner who leaves a car unlocked and the key in the ignition may be sued by anyone who is injured by the actions of the thief who steals the car. The court said there's a very clear relationship between keys left in the ignition and the accidents that follow the theft of those ca And the court said it makes no difference whether the municipality has or doe have an ordinance prohibiting the leaving of keys in ignition.

"In other words, it's not just to help protect you somewhat against theft of your car; it's to help guard against damage to other people or to property by the car thief. So, why take the chance? Lock up!"

Reprinted by permission of the Schenectady Gazette.

ABA. "Liberty Under Law: Anarchy Totalitarianism--This is the Choice," p. 72 (1 reprinted in M. Manoni, *The Law Society; Where Could I Fit In?* (exp. ed., 1970

This work considers an example from real life.

"The most recent experiment in educational anarchism has been going through experience of relearning and rethinking the significance of authority in an interesting way. It has been taking place in Toronto where an eighteen stor anarchic college, Rochdale College, opened this year. Each resident was dec free 'to do his own thing.' What happened? Elected councils found themselv declared to be without authority. A motorcycle gang invaded the college and e Touch of Anarchy." Newsweek. Vol. 74. October 20, 1969. p. 71.

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## Additional Resources

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Unit I, Chapter III. "Our laws and legal processes -- Do we need them?" Lexing Mass. Ginn and Co. 1973.

## Films

*Due Process of Law Denied.* McGraw-Hill.
(From last part of film, *The Oxbow Incident.*)

*An Imaginary They.* Modern Learning Aids.

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See text, p. 49.

# MODULE II - TOOLS OF THE LAW*

1. *The Main Focus.*

How does law work? What difference does it make to junior high school social studies students? Laws
can be viewed as simply a series of tools or techniques of social control that *may* be put to work on improving
But like most other tools, laws don't work automatically; they are used by men. Thus, like most tools, laws ca
or misused. By surveying legal tools or techniques, this unit attempts to convey understandings about the dyna
of our government and legal system.

2. *Why This Focus?*

The reasons for teaching about this subject are fourfold. First, the various legal tools or technique
*how* law does what it does. This tells students about the nature of law—gives them a more accurate picture of
rules prohibiting and restricting activity but various resources to facilitate social interaction and to amelio

Second, by looking at the ways law can work on a problem, students should understand better why a s
short of its goals, for example: (1) some laws may be unsound, (2) sound laws may be unfairly applied, (3) the
system may put the wrong resources to work on a problem, or (4) law may fail to get necessary support from nonl

Third, ours is a complex legal system in which the role of the individual citizen appears frustratingl
surveying the various techniques by which law works, one may more accurately identify the roles of private indi
influencing, activating, and operating aspects of our legal system. As some of law's resources work, the role
realistically quite remote; in the case of others, his role is critical.

Finally, by examining legal techniques at work on a difficult social problem, students may get a more
complexity of social problems and the limits of law in solving them. Social problems are not always readily an
through any single legal technique or combinations of techniques.

3. *Outline of the Teaching Scheme.*

This module treats three understandings: that there are five kinds of legal techniques which may be p
social problem; that the effectiveness of law in treating a given problem may in large part depend on whether
legal system call on the appropriate combination of legal techniques; and that law is not the only social cont
problems—that is, law depends heavily on nonlegal factors in doing its work.

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*See footnote on page 1, Module 1.

# MODULE II-TOOLS OF THE LAW*

work? What difference does it make to junior high school social studies students? Laws exist for people. Law
ly a series of tools or techniques of social control that *may* be put to work on improving the quality of life.
ools, laws don't work automatically; they are used by men. Thus, like most tools, laws can be used effectively
ying legal tools or techniques, this unit attempts to convey understandings about the dynamics of the operation
legal system.

for teaching about this subject are fourfold. First, the various legal tools or techniques surveyed represent
does. This tells students about the nature of law—gives them a more accurate picture of what law is: not merely
restricting activity but various resources to facilitate social interaction and to ameliorate social problems.

ooking at the ways law can work on a problem, students should understand better why a system of law may fail
or example: (1) some laws may be unsound, (2) sound laws may be unfairly applied, (3) the managers of the legal
ong resources to work on a problem, or (4) law may fail to get necessary support from nonlegal forces.

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techniques by which law works, one may more accurately identify the roles of private individuals in
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aw depends heavily on nonlegal factors in doing its work.

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e 1, Module 1.

## SUMMARY OF UNDERSTANDINGS

I. AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:

- THE BENEFIT DISTRIBUTION TECHNIQUE
- THE REGULATION TECHNIQUE
- THE PENAL TECHNIQUE
- THE PRIVATE REMEDY TECHNIQUE
- THE PRIVATE ARRANGEMENT TECHNIQUE

II. THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

III. NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

## UNDERSTANDING I

AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMIT DISTINCT LEGAL TECHNIQUES OR TOOLS:

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- THE REGULATION TECHNIQUE
- THE PENAL TECHNIQUE
- THE PRIVATE REMEDY TECHNIQUE
- THE PRIVATE ARRANGEMENT TECHN

### A. *Explanation of Understanding I*

For each of the five legal techniques, a key example will be used to show how two serious social problems: highway safety and pollution. To help the teacher direct how each legal technique works on these problems, suggested questions, topics, and addi be found in section B. As the impact of each legal technique on highway safety and pol these questions might be considered:

- How does each legal technique work on a social problem?

SUMMARY OF UNDERSTANDINGS

I. AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:

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*f Understanding I*

of the five legal techniques, a key example will be used to show how law attempts to solve
l problems: highway safety and pollution. To help the teacher direct the discussion of
chnique works on these problems, suggested questions, topics, and additional examples will
on B. As the impact of each legal technique on highway safety and pollution is examined,
ight be considered:

oes each legal technique work on a social problem?

- Who initiates use of each technique and who actually operates it?
- How large is the role of the private citizen in it?
- How can each legal technique fail to perform the social function it sets out

However, before taking up a specific social problem and showing how the tools of work on it, the legal techniques scheme will be summarized as follows:

- A brief general description of each legal technique
- An explanation of the reasons for using this relatively unfamiliar scheme in how the government and legal system operate
- A chart which may be helpful in showing the legal techniques scheme at a glan

*The benefit distribution technique.* A legal system may collect taxes and then c monies into public benefits; e.g., public highways, welfare assistance, public education involves governmental action and is called a legal technique because the raising of tax m conferral of such public benefits is always shaped and ordered in important ways by law.

*The regulation technique.* A legal system may permit certain wholesome behavior order to curb abuses. It is obviously desirable to have manufacturers process food, but t also comply with standards of purity. It is desirable for people to drive cars, but car be licensed in accordance with standards of safety. When a legal system induces officia standards and see that manufacturers, drivers, etc. comply with them, the system utilize the regulation technique.

*The penal technique.* Some conduct, as such, is wholly antisocial; e.g., murde the penal technique to prohibit and punish such conduct in an attempt to discourage its

*The private remedy technique.* This basic technique is most familiarly known in lawsuits to force defendants to pay compensatory damages (money) to those they have harm the course of daily life.

*The private arrangement technique.* A legal system leaves a great many problems private arrangements, and private administration. These private activities may be carri groups, organized bodies, corporations, etc. The private arrangements involved may incl property transfers, employment relations, and so on. But the law plays important enough private activities for this to be thought of as a distinct legal technique. First, law *p* activities. Second, it *facilitates* them by specifying in the law itself how valid corpo how valid contracts are formed, and how lawful property transfers are made. Third, and

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ts are formed, and how lawful property transfers are made. Third, and of great importance,

when such arrangements break down (e.g., when a contract is broken), the law usually steps i
the arrangement by awarding monetary damages for the loss sustained by the wronged party to
contract.

Separation of powers analysis provides a scheme that is traditionally utilized in
the operation of American government. This unit, however, proposes an analysis of the legal
a systematic survey of a limited number of distinct legal techniques. The obvious difficul
moving from a familiar teaching scheme to a less familiar one calls for some justification.

When the government of the United States was formed, three separate branches were
this governmental framework, specific limited powers were assigned to the legislature, the e
judiciary. The primary rationale for such separation of powers was that each branch of gov
serve as a check on the others, thus protecting the governed from the potential oppression
concentration of governmental power. American history illustrates that the authors of the
Constitution were perceptive in designing a government of separate powers to help protect t
the government. And teaching this function of a constituted government of separated powers
Yet the separation of powers scheme is commonly used for an additional pedagogical purpose—
government operates. Students traditionally learn that the legislative branch makes and ch
executive branch enforces laws; and the judicial branch interprets and applies laws. Tidy
this scheme may be, it is not an accurate and informative way to analyze the operation of A
However, the legal technique scheme takes into account the available tools or techniques of
individuals and government use to solve social problems.

A survey of the operation of various legal techniques presents a more refined pict
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Separation of powers analysis has a serious gap. The entire administrative-regula
government is missing. These government officials, whose positions are normally created by
and filled by the executive, are neither part of the legislative, executive, or judicial br
Communications Commission, Federal Power Commission, etc.).

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Module 2

Separation of powers analysis unrealistically separates in a rigid way the structu from the operation of law. The government is not only structured by law, but law provides which government operates. On the other hand, the legal techniques analysis turns the focus structure of government to analysis of structure in the context of operational processes, w on processes.

The proposed legal techniques approach to the legal system helps put law in a prop as a subject for humanities or social studies. The legal techniques are the tools in gover limited number of resources that can be used or misused in working on the problems of impro life.

The legal technique scheme has relatively strong organizing power for systematic a tionally fragmented concepts concerning the operation of government. For example, the lega scheme provides an opportunity, systematically and realistically, to consider the role of t the operation of the legal system more so than does the separation of powers analysis. For clearly the role of the private citizen is designed to be more remote in operating the dist than in operating the remedial technique. The individual citizen has little direct voice i dollars are spent, yet the legal system will take action to remedy a private wrong only whe with a grievance initiates a lawsuit.

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## OUTLINE OF LEGAL TECHNIQUES SCHEME

| | LEGAL TECHNIQUE | EXAMPLES OF THE LEGAL TECHNIQUE AT WORK | SOCIAL NEED OR PROBLEM THAT THE LEGAL TECHNIQUE INTO |
|---|---|---|---|
| Benefit Distribution | COLLECTING TAXES and DISTRIBUTING BENEFITS | (a) System of Public Education<br>(b) Social Security System | (a) Preparation of Youth for Productive Adulthood<br>(b) Care for Aged, Otherwise Care for Themselves |
| Regulation | EXPERT REGULATION OF SPECIFIC ACTIVITY | (a) Federal Communications Commission<br>(b) Food and Drug Administration | (a) Coordination and Quality Radio and TV Airwaves<br>(b) Wholesome Products on th |
| Penal | PROHIBITING AND PUNISHING CERTAIN BAD ACTS | (a) Statute Making Assault and Murder Crimes Punishable by Imprisonment<br>(b) Statute Making Thefts a Crime Punishable by Imprisonment | (a) Prevention of Violent Ac Persons<br>(b) Protection of Private Pr |
| Private Remedy | LAWSUITS TO REMEDY DAMAGE DONE | (a) Suit for Assault and Battery<br>(b) Suit for Slander | (a) Remedy Harm, Wrongfully Discourage Certain Antis<br>(b) Provide for Rational Dis |
| Private Arrangement | SUPPORTING PRIVATE ARRANGEMENTS | (a) Tax-Free Status of Charities and Private Schools<br>(b) Enforcement of Contract Promises Between Private Individuals | (a) Encouraging Private Effo Meeting Social Needs<br>(b) Orderly Private Exchange and Services in Society |

OUTLINE OF LEGAL TECHNIQUES SCHEME

| GAL TECHNIQUE | EXAMPLES OF THE LEGAL TECHNIQUE AT WORK | SOCIAL NEED OR PROBLEM THAT CALLS THE LEGAL TECHNIQUE INTO PLAY |
|---|---|---|
| ECTING TAXES and UTING BENEFITS | (a) System of Public Education<br>(b) Social Security System | (a) Preparation of Youth for Responsible Productive Adulthood<br>(b) Care for Aged, Otherwise Unable to Care for Themselves |
| REGULATION OF IC ACTIVITY | (a) Federal Communications Commission<br>(b) Food and Drug Administration | (a) Coordination and Quality in use of Radio and TV Airwaves<br>(b) Wholesome Products on the Market |
| TING AND PUNISHING TAIN BAD ACTS | (a) Statute Making Assault and Murder Crimes Punishable by Imprisonment<br>(b) Statute Making Thefts a Crime Punishable by Imprisonment | (a) Prevention of Violent Acts Against Persons<br>(b) Protection of Private Property |
| S TO REMEDY GE DONE | (a) Suit for Assault and Battery<br>(b) Suit for Slander | (a) Remedy Harm, Wrongfully Done, and Discourage Certain Antisocial Acts<br>(b) Provide for Rational Dispute Settlements |
| ING PRIVATE GEMENTS | (a) Tax-Free Status of Charities and Private Schools<br>(b) Enforcement of Contract Promises Between Private Individuals | (a) Encouraging Private Efforts in Meeting Social Needs<br>(b) Orderly Private Exchange of Goods and Services in Society |

Module 2

## B. *Teaching Understanding I - 1. Benefit Distribution Technique*

### OBJECTIVES

- The student may demonstrate his understanding of the different ways in which gove officials may use law as a tool by identifying news stories or cartoons which ill these techniques.
- The student may demonstrate ability in the valuing process by identifying possibl alternatives in the case of a social problem and by being able to justify his cho an alternative.

### QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed by collection of public monies and dist of public benefits? How are you and your families benefited by the collection of
- How do legal officials and private citizens take part in the operation of this le technique?
- How might the distributive technique as it is used in our legal system be made mo effective?

### USE OF VISUALS (For all legal techniques)

- Students can collect pictures and cartoons illustrating uses of each of the techn
- The cartoons on pages 42, 54, and 67 may be analyzed in terms of the technique n in dealing with the problem.
- The cartoons may also be analyzed with respect to which cartoon reflects underst on the part of the cartoonist of the various legal techniques.
- A set of study prints concerning pollution can be studied to identify the legal which would be applied to remedy the situation.

*rstanding I - 1. Benefit Distribution Technique*

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ould be applied to remedy the situation.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESO

1. The benefit distribution technique at work on a social problem.

## Highway Safety

(a) Have students analyze the chart and graph on pages 55 and 56 showing the proportion and amount of New York State's budget spent annually on highway construction and maintenance. Compare with other expenditures. Which is the greatest? The least? Do they think that the expenditures are fairly allocated?

(b) Have pupils, through class discussion, identify ways public moneys might be spent on the problem of highway safety. The following are some of the possible ways:

- Construction of safe highways (grants of public funds for highway construction may be conditioned on meeting safety standards)
- Acquisition and maintenance of road traffic control devices (laws provide for purchasing and maintaining stop signs, red lights, lines in the middle of the road, etc.)
- Police direction of traffic
- Research for highway safety improvement
- Public school driver education

The illustrative problems of high
pollution are especially useful
surveying law's basic resources
interests and because these prob
others) are ones on which *all fi*
legal techniques may be put to w
begin this unit is to present cu
coverage concerning the extent t
safety or pollution is in fact a
today.

The suggested content and proced
legal techniques merely attempt
some *examples* of legal activity
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which law works. Thus, the teac
particular importance in directi
to inquire into the distinctive
the legal techniques at work.

In looking at expenditure of pub
or prevent a problem (the benefi
technique at work), students may
how tax dollars can promote high
pollution. For instance, tax do
to build a cloverleaf where many
occurred at the entrance and exi
or tax dollars can be appropriat
of government for everything fro
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salaries or funds for private h
research and school driver educa

PTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The benefit distribution technique at work on a social problem.

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dle of the road, etc.)

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earch for highway safety improve-
t

lic school driver education

The illustrative problems of highway safety and pollution are especially useful for purposes of surveying law's basic resources because of current interests and because these problems (unlike many others) are ones on which *all five* of the basic legal techniques may be put to work. One way to begin this unit is to present current newspaper coverage concerning the extent to which highway safety or pollution is in fact a social problem today.

The suggested content and procedures for each of the legal techniques merely attempt to give students some *examples* of legal activity of a distinctive kind. Such examples by themselves probably will do little in revealing to students different ways in which law works. Thus, the teacher's role is of particular importance in directing class discussion to inquire into the distinctive aspects of each of the legal techniques at work.

In looking at expenditure of public moneys to relieve or prevent a problem (the benefit distribution technique at work), students may consider as examples how tax dollars can promote highway safety or fight pollution. For instance, tax dollars may be used to build a cloverleaf where many accidents have occurred at the entrance and exit of a major highway or tax dollars can be appropriated at various levels of government for everything from road signs and yellow paint for the highway to traffic policemen's salaries or funds for private highway safety research and school driver education programs. In

## DETAILED DESCRIPTION OF STRATEGIES

(c) Have pupils check back issues of their local newspapers for stories on spending public money on highway safety and antipollution techniques. Then have them make a bulletin board display of the materials they have located, indicating the relationship of the display to benefit distribution.

(d) Assign certain pupils in class the task of checking newspapers for stories of highway accidents that were caused at least in part by failure of the legal system to make use of the benefit distribution technique to build "safe" highways for the driving public. Have some of the pupils read their selections in class and call on various classmates to see if they are in agreement as to where the fault lies.

(e) Teachers should be able to secure a copy of the town or city budget. Using an overhead or an opaque projector, get pupils to point out the amount spent on transportation safety, relating this to benefit distribution.

(f) To make pupils more aware of highway safety, show them a film or filmstrip on this topic. Use your local film center for possible suggestions if the title listed below is unavailable, or ask the driver education teacher.
—"Autos and All that Traffic." 25 min. Color.

## DISCUSSION OF STRATEGIES AND RESOURC

the field of pollution, tax dollars
by law to be spent on waste or garba
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or to pay the salaries of inspectors

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### Questions on the Operation of the B Distribution Technique

To show that the benefit distributi
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a problem, students will need to co
questions about the operation of th
How does it get at the problem? Wh
this technique in motion on the pro
decision is made, who actually carr
system's efforts under this techniq
functions does this technique perfo
How may this technique fail to solv
point—what are its limits?

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the field of pollution, tax dollars may be set aside by law to be spent on waste or garbage disposal plants, or for research on the pollution problem, or to pay the salaries of inspectors.

This process of collecting public moneys converting them into certain benefits, and distributing them to members of the public is called a legal technique because the law structures and orders *how the process is carried out*. As indicated in section B-1, statutes can be presented for illustrative purposes to show something of the specific law content of the benefit distribution technique. The teacher, in the beginning, may need assistance in finding such statutes and editing them for student use. An alternative way to emphasize the law content of the taxing and spending process is to have students role-play legislators in the process of deciding for which problems the state's taxes will be spent.

### Questions on the Operation of the Benefit Distribution Technique

To show that the benefit distribution technique is a particular, distinctive *legal* resource for treating a problem, students will need to consider further questions about the operation of this technique. How does it get at the problem? Who decides to put this technique in motion on the problem? Once this decision is made, who actually carries out the legal system's efforts under this technique? What other functions does this technique perform in society? How may this technique fail to solve the problem in point—what are its limits?

Module 2

## DETAILED DESCRIPTION OF STRATEGIES

### Pollution

(a) Have class identify ways public moneys might be spent on the problem of water pollution and air pollution. Some of the following ways should be suggested: (a good technique is to build up a list on the chalkboard as pupils suggest their ideas):

- —spending Federal money to assist state sewage construction projects
- —supporting research on new technologies of waste disposal
- —spending state funds to assist localities in the construction and maintenance of sewage treatment plants and sewer systems.
- —spending public money for research and development of solutions to the air pollution problem
- —building fewer roads and more mass transit

(b) With the great interest and concern about all aspects of pollution today, there are many audiovisual materials today dealing with all aspects of this problem. Use either a movie or filmstrip series to help make pupils more aware of the problems, and some of the various remedies suggested.

## DISCUSSION OF STRATEGIES AND RESOUR

The benefit distribution technique
social problem or meet a social nee
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from the problem.

Generally, legislative bodies rathe
administrators decide to launch a
gram in the first place. Legislat
statutes, decide how revenues will
then decide how to channel the dis
benefits. Executive branch offici
cal pressure on legislators, voter
opinion and thus influence represe
private interest groups lobby and
decisions of legislative representa

But the officials (legislators) wh
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may do so by employing private par
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the executive may cause the legisl
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decide how this money should be sp
in turn employ a private contracto
given project such as the straight
The driving public is ultimately t
this process.

## ON OF STRATEGIES

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s identify ways public moneys
spent on the problem of water
and air pollution. Some of
wing ways should be suggested:
echnique is to build up a list
alkboard as pupils suggest
as):

g Federal money to assist
ewage construction projects

ing research on new tech-
s of waste disposal

g state funds to assist local-
n the construction and main-
of sewage treatment plants
er systems.

g public money for research
elopment of solutions to the
lution problem

g fewer roads and more mass

great interest and concern
aspects of pollution today,
many audiovisual materials
ling with all aspects of this
Use either a movie or film-
ies to help make pupils more
the problems, and some of the
emedies suggested.

## DISCUSSION OF STRATEGIES AND RESOURCES

The benefit distribution technique tries to solve a social problem or meet a social need mainly by collecting public moneys and converting them to benefits for those who manifest the need or suffer from the problem.

Generally, legislative bodies rather than courts or administrators decide to launch a distributive program in the first place. Legislators, by passing statutes, decide how revenues will be raised and then decide how to channel the distribution of public benefits. Executive branch officials assert political pressure on legislators, voters express public opinion and thus influence representatives, and private interest groups lobby and thereby influence decisions of legislative representatives.

But the officials (legislators) who decide to launch the benefit distribution technique are rarely the same people who actually carry these efforts out. Special administrators may direct these efforts and may do so by employing private parties to deliver the ultimate benefit to members of the public. For example, influence from voters, interest groups, or the executive may cause the legislative branch to appropriate dollars for highway programs. A state or local highway department (administrators) may then decide how this money should be spent. It might in turn employ a private contractor to undertake a given project such as the straightening of a highway. The driving public is ultimately the beneficiary of this process.

## DETAILED DESCRIPTION OF STRATEGIES

Below are some of the possible resources:

—"Pall Over Our Cities" b/w

—"Pollution is a Matter of Choice" NBC-TV (54 min. Examines the environmental dilemma of modern man.)

—"Environmental Pollution" "Our World in Crisis" Wards Educational Filmstrips (Series of six color filmstrips.)

(c) The following questions used in class discussion may help to guide pupils to a better understanding of the benefit distribution technique:

—Name some further examples of the benefit distribution technique at work on the problems of highway safety and pollution, and give an example to show how each contributes to safer highways or a better environment.

—Does the benefit distribution technique affect other social needs or problems of society other than highways and pollution? Explain.

—Who do you think first decides to put the benefit distribution to work on certain problems?

## DISCUSSION OF STRATEGIES AND RESOU

While executives, judges, and legi
familiar to students, administrati
probably are not so familiar. Yet
officials play a key role in carry
legislature's benefit distribution
implementing certain other legal t
(primarily the regulation techniqu
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system. Often they are experts in
Legislatures normally pass laws au
creation of administrative agencie
highway department, the internal r
the food and drug administration,
department, etc. But the executiv
the administrative officials to f
created by the legislature.

Combating pollution and working fo
are by no means the only function
tive technique performs. Student
with several other examples of th
tion technique at work on social
In addition to combating pollutio
highway safety, tax dollars go fo
and hospitals, a welfare system,
facilities, conservation, the pub
system, national defense, and eve

It is likely that students in dis
legal techniques will readily rec
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work effectively on the problem u
(e.g., we do not spend enough tax
pollution), and (2) even if the gi

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(54 min. Examines the
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DISCUSSION OF STRATEGIES AND RESOURCES

While executives, judges, and legislators may be familiar to students, administrative officials probably are not so familiar. Yet administrative officials play a key role in carrying out the legislature's benefit distribution programs and in implementing certain other legal techniques (primarily the regulation technique), too. Administrators do much of the detailed work of the legal system. Often they are experts in their fields. Legislatures normally pass laws authorizing the creation of administrative agencies such as the highway department, the internal revenue service, the food and drug administration, the education department, etc. But the executive then appoints the administrative officials to fill the positions created by the legislature.

Combating pollution and working for safer highways are by no means the only functions that the distributive technique performs. Students should be familiar with several other examples of the benefit distribution technique at work on social problems or needs. In addition to combating pollution and encouraging highway safety, tax dollars go for public health and hospitals, a welfare system, public recreation facilities, conservation, the public education system, national defense, and even space exploration.

It is likely that students in discussing each of the legal techniques will readily recognize: (1) that the given technique, as used, does not in fact always work effectively on the problem under consideration (e.g., we do not spend enough tax dollars to combat pollution), and (2) even if the given technique were

—What individuals would operate this technique, and how would their influence be felt?

—Why can't the allocation of moneys result in the end of all traffic fatalities and pollution problems?

(Note for teachers: Answers to suggested questions listed above can be found by reading the section "Discussion of Strategies and Resources.")

(d) Activities

—Name committee(s) of students to sit as an appropriations or budget committee of the town or state legislature. Have the committee outline a budget and decide what the state's public money should be spent on for the upcoming year. BE SURE TO HAVE LESS MONEY AVAILABLE THAN IS REQUIRED, so that students will have to think about criteria for setting priorities. Have the committee hold a hearing where various members of the class role play representatives from interest groups; then have the committee report the budget to the class for discussion before the class, sitting as the legislature, votes it into law or returns it to the committee.

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solve the problem at hand (e.g
highway construction would no

If students do not raise thes
should. They should be pursu
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several techniques work on th
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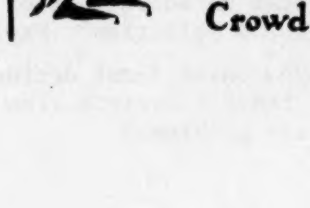

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before the class, sitting as
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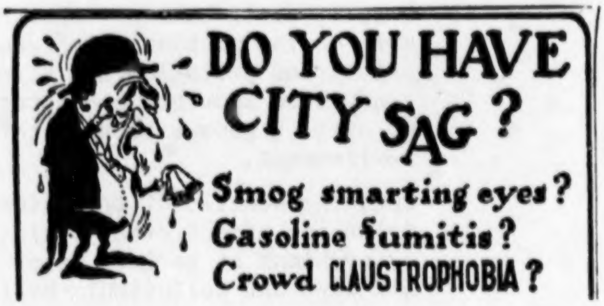
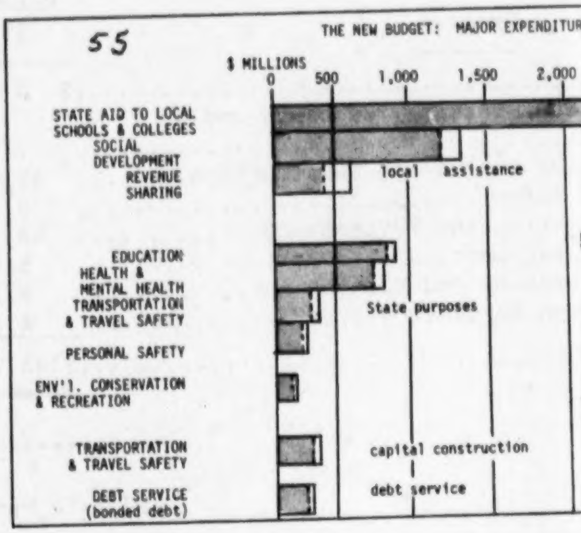
it to the committee.

used as effectively as possible, it couldn't alone solve the problem at hand (e.g., maximum safety in highway construction would not end auto accidents).

If students do not raise these points, teachers should. They should be pursued in order to emphasize that: (1) each legal technique is a tool available to a legal system that can be well used or misused (we might simply spend too much or too little on defense or on education, or we might administer these expenditures in a wasteful or ineffective manner); (2) some techniques are more effective than others in working on a given problem; (3) often several techniques work on the same problem or social need; (4) even where legal techniques are properly used, some problems are very complex and are beyond the reach of legal solutions.


DO YOU HAVE
CITY SAG?
Smog smarting eyes?
Gasoline fumitis?
Crowd CLAUSTROPHOBIA?

—An alternative: A student may be assigned to play the role of mayor or state governor (depending on what level of government is being simulated). Students as interest groups might put pressure on the executive which will bring into play more completely the "lawmaking" process. See also references to Mehlinger and Patrick, page 78.



See text, page 54.

State of New York, Execut
April 1, 1973 to March 31

ON OF STRATEGIES

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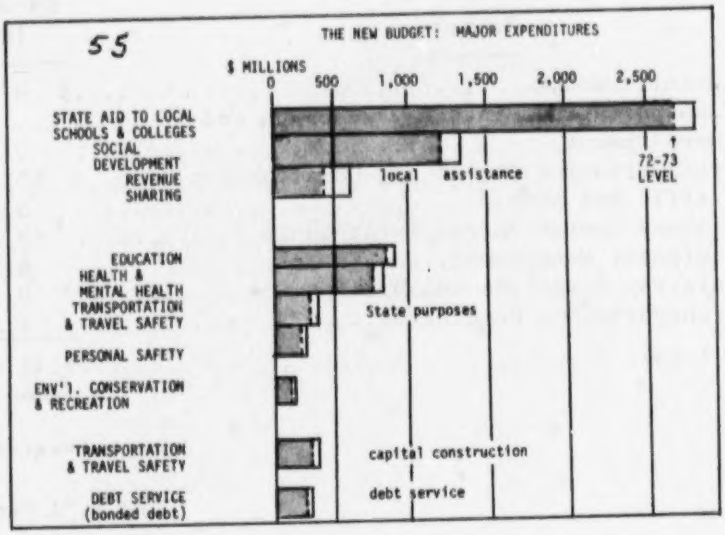
## DISCUSSION OF STRATEGIES AND RESOURCES



See text, page 54.

State of New York, Executive Budget for
April 1, 1973 to March 31, 1974, p. M-12

Module 2

## STATE PURPOSES—REGULAR

## SUMMARY OF APPROPRIATIONS AND CHANGES

| Program | Personal Service<br>Recommended 1973-74 | Non-Personal Service<br>Recommended 1973-74 |
|---|---|---|
| Administration | $ 9,995,400 | $ 3,019,100 |
| Transportation Planning, Research and Development | ........ | 4,425,000 |
| Transportation Design and Construction | 55,012,000 | 3,228,000 |
| Traffic and Safety | 6,447,000 | 969,000 |
| Highway Operation and Maintenance | 58,141,000 | 33,200,000 |
| Equipment Management | 5,559,000 | 15,569,000 |
| Waterway Operation and Maintenance | 9,308,100 | 923,000 |
| Transportation Regulation | 1,514,100 | 143,000 |
| Total | $145,976,600 | $61,477,400 |

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## 1973-74 Program Summary

## (Regular and First Instance Funds)

| Program | Reappropriations | New Appropriat |
|---|---|---|
| Transporation Design and Construction, and Traffic Safety | $1,012,087,148 | $621,95 |
| Highway Operation and Maintenance | 3,818,467 | 4,93 |
| Waterways Operation and Maintenance | 1,574,305 | 5,52 |
| Administration | 228,350 | ....... |
| Advance to Public Authorities | 121,779,158 | 85 |
| Total | $1,139,487,428 | $633,26 |

State of New York Executive Budget for April 1, 1973 to March 31, 1974, pp. 495 a

## STATE PURPOSES—REGULAR

## SUMMARY OF APPROPRIATIONS AND CHANGES

| | Personal Service | Non-Personal Service | Total |
|---|---|---|---|
| Program | Recommended 1973-74 | Recommended 1973-74 | Recommended 1973-74 |
| | $ 9,995,400 | $ 3,019,100 | $ 13,014,500 |
| Planning, Research and | ........ | 4,425,000 | 4,425,000 |
| Design and Construction | 55,012,000 | 3,228,000 | 58,240,000 |
| ety | 6,447,000 | 969,000 | 7,416,000 |
| on and Maintenance | 58,141,000 | 33,200,000 | 91,341,000 |
| ement | 5,559,000 | 15,569,000 | 21,128,000 |
| ion and Maintenance | 9,308,100 | 923,000 | 10,232,000 |
| Regulation | 1,514,100 | 143,000 | 1,657,500 |
| | $145,976,600 | $61,477,400 | $207,454,000 |

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## 1973-74 Program Summary

## (Regular and First Instance Funds)

| Program | Reappropriations | New Appropriations |
|---|---|---|
| poration Design and Construction, and fic Safety | $1,012,087,148 | $621,950,000 |
| ay Operation and Maintenance | 3,818,467 | 4,935,000 |
| ways Operation and Maintenance | 1,574,305 | 5,525,000 |
| istration | 228,350 | ........... |
| ce to Public Authorities | 121,779,158 | 850,000 |
| al | $1,139,487,428 | $633,260,000 |

ew York Executive Budget for April 1, 1973 to March 31, 1974, pp. 495 and 817.

Module 2

B. *Teaching Understanding I - 2. Regulation Technique*

QUESTIONS TO REACH UNDERSTANDING

. What necessary social tasks are aided by legal standards and rules for guidance

. How do legal officials and private citizens take part in the operation of this

. How might the regulation technique as it is used in our legal system be made mo

DETAILED DESCRIPTION OF STRATEGIES

1. The regulation technique at work on a social problem.

Highway Safety

(a) Have class identify ways the regulation technique might work on the problem of highway safety. Examine relevant regulations. Suggest the following topics with which some of the class members may already be familiar:

—regulating by licensing "safe" drivers

-New York State operator's and junior operator's license requirements

-driver's license written examination

-driver's license road test

—regulations to keep unsafe vehicles off the road

-New York State auto inspection requirements

DISCUSSION OF STRATEGIES AND RES

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resources suggested under the re
simply indicate examples of the
at work. To develop an understa
tion technique, the teacher will
student inquiry to the special w
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should be answered about the reg

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Who decides to put this techniqu
actually carries out the legal s
this technique? What other prob
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are its limits?

The regulation technique genera
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Such standards and guidance try
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*rstanding I - 2. Regulation Technique*

REACH UNDERSTANDING

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ION OF STRATEGIES

1. The regulation technique at work on a social problem.

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DISCUSSION OF STRATEGIES AND RESOURCES

As with the distribution technique, procedures and resources suggested under the regulation technique simply indicate examples of the regulation technique at work. To develop an understanding of the regulation technique, the teacher will need to direct student inquiry to the special workings of this legal resource. The same series of questions that were used to examine the benefit distribution technique should be answered about the regulation technique.

How does this technique generally get at a problem? Who decides to put this technique in motion, and who actually carries out the legal system's efforts under this technique? What other problems in society does this legal technique treat? How may this legal technique fail to solve the problem in point—what are its limits?

The regulation technique generally approaches a given problem by setting qualifying standards or standards for the conduct of private citizens and by providing expert guidance for a particular kind of activity. Such standards and guidance try to facilitate and coordinate things for people engaged in the activity

- —regulating safe traffic flow
  - -determining and requiring uniform traffic control devices
  - -intersectional control
  - -pavement markings

All of the above information can be learned in some form or other in the New York State Driver's Manual which can be obtained from the local Department of Motor Vehicles office.

(b) Discuss with class various ways the regulation technique might work on the problem of pollution. Some of the areas in which there have been attempts at regulation include the following:

- —regulating amount of permissible emissions into the air from industrial plants
- —regulating motor vehicle air pollution
- —standards regulating pollution of inland water
- —standards regulating pollution of the ocean

(c) Collect for class study primary resource material that illustrates the regulation technique at work on the problem of pollution.

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from the activity. For examp
highway safety, we need stand
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standards and licensing drive
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they may take, the regulation
species of wildlife. People
protected in the market place
are informed of standards con
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Another key function of the r
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Questions on the Operation of
Technique

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dards regulating pollution land water

dards regulating pollution he ocean

t for class study primary ce material that illustrates gulation technique at work on oblem of pollution.

or to prevent the occurrence of undesirable results from the activity. For example, in relation to highway safety, we need standards for determining who is qualified to drive on the highways. Setting standards and licensing drivers by means of the regulation technique is better than leaving the decision up to each individual as to whether he is qualified to drive safely. Likewise, some standards for keeping unsafe vehicles off the roads are desirable. Standards for limiting the amounts of emissions of pollutants into the air and water may help protect the environment. Hunters are protected by qualifications or standards that the regulation technique sets for getting a license. By informing people as to when they may hunt and amounts of game they may take, the regulation technique preserves species of wildlife. People are somewhat better protected in the market place because manufacturers are informed of standards concerning pure food and drugs by the regulation technique.

Another key function of the regulation technique, in addition to setting standards for a given activity, is coordination of certain activity. Without regulation, auto or air traffic flow would be hazardous as well as very congested. Coordinated use of the radio or TV airwaves would be impossible without regulation of their use.

### Questions on the Operation of the Regulation Technique

As with the distributive technique, legislators and administrators play the key roles, but private

## DETAILED DESCRIPTION OF STRATEGIES

Note to Teachers: You may obtain a multitude of primary resources on how the state has attempted to regulate pollution by writing to:

New York State Department of
Environmental Conservation
Albany, New York

Ask for series of information leaflets put out by their department. Also the following booklets and leaflets from the above department:

- Help Give Earth a Chance
- New York's Pure Water's Progress
- Showdown
- Developing and Managing the Water Resources of New York
- An Environmental Checklist or
- Handbook of Environmental Education Strategies (obtained from Barry W. Jamason, Chairman, Environmental Task Force, Bureau of Continuing Curriculum Development, State Education Department, Albany, New York 12224.)

(d) The following questions and strategies should serve to aid the pupils in learning more about the regulation technique.

- Name and explain some other examples of legal restrictions at work on the

## DISCUSSION OF STRATEGIES AND RESO

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have an important influence. Ger
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administrative commissions and bu
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The details of constructing and
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individuals, interest groups, and the executive may have an important influence. Generally the legislature decides that a particular subject area needs expert regulation, and then goes about creating administrative commissions and bureaus of experts to carry out a regulatory program. The legislature may make broad guidelines for regulation, but details of making and implementing regulations are ordinarily left to the experts. For example, the legislature decides that some kind of standards are needed for licensing drivers to keep unsafe drivers off the roads. The legislature then passes a statute creating a body of administrative experts (Bureau of Motor Vehicles) and gives them some general guidelines: "Before a license is granted the applicant shall pass such examinations as to his qualification as the Commissioner of Motor Vehicles shall require." The details of constructing and administering standards for getting a license are left to the experts. The legislators themselves lack time and expertise to do this task. The same scheme is generally followed for other examples of the regulation technique at work. The legislature decides that regulation of pollution, transportation, education, stocks and bonds, communications, commerce, etc., is necessary. It then lays down broad guidelines and creates administrative offices. The executive usually appoints experts to fill these offices, and these experts go about the day-to-day work of regulating.

The executive, private individuals, and interest groups may have an influence on the regulatory process. For example, shortly after he got into office President Nixon made it clear that he wanted

### DETAILED DESCRIPTION OF STRATEGIES

problems of highway safety and pollution, and how they contribute toward improving the area mentioned.

—How can you explain the occurrence of so many auto accidents and different types of pollution despite the many restrictions to ensure highway safety and conservation of our natural resources?

Strategies

(a) Have pupils check newspapers for reports of the regulation technique at work and make a bulletin board display. See if they can discover some areas right in their own school.

(b) Have a student group role-play administrators who are called on to make regulations concerning the following activities:

—qualifying to be a public school teacher

—qualifying to use a snowmobile

—securing a permit for a rock festival

One might play the role of principal, another superintendent of schools, and yet others might play the part of the board of education members.

(c) Invite a visitor from an administrative bureau that works with the regulation

### DISCUSSION OF STRATEGIES AND RESOU

Congress to create a new administra
regulate environmental abuse more
vate interest groups like the Envi
Fund or the auto manufacturers' lo
on the legislature to increase or
in an area like pollution control.
administrators are moved to action
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out the need.

Again, it is appropriate to look a
technique critically: Why might i
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unsound regulations; for example,
standards might be dangerously lax
might fail to use the regulatory t
might be helpful; for example, the
regulation of air pollution until
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enforced or they might be enforced
example, landlord violations of bu
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And finally, even where the regula
works well, the problem on which i
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techniques it still cannot "solve"
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## ION OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

Congress to create a new administrative agency to regulate environmental abuse more effectively. Private interest groups like the Environmental Defense Fund or the auto manufacturers' lobby put pressure on the legislature to increase or decrease regulation in an area like pollution control. Often local administrators are moved to action by private citizens. The highway department may put a stoplight at an intersection when private citizens point out the need.

Again, it is appropriate to look at this legal technique critically: Why might it fail to "solve" the problems it addresses? Legal officals may make unsound regulations; for example, pollution standards might be dangerously lax. Legal officials might fail to use the regulatory technique where it might be helpful; for example, there was little regulation of air pollution until recently. Effective standards might be set, but they might not be enforced or they might be enforced unfairly; for example, landlord violations of building and sanitation codes in many places are sometimes ignored. And finally, even where the regulation technique works well, the problem on which it works may be so complex that alone or in combination with other legal techniques it still cannot "solve" the problem completely. So long as there are autos there are bound to be some auto accidents.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

technique to talk on how these officials go about their regulating activity (for example, highway department, motor vehicle department, conservation department, fish and game department, etc.) You might have a panel prepare questions that various members of the class would like to ask.

(d) Have a committee of three pupils do a research project on the role of Ralph Nader in the field of automobile safety. Suggest they read "Unsafe At Any Speed" and each report different aspects of what Mr. Nader has uncovered. This book is readily available in most libraries. Some of the pupils in class might be most interested in this project since it concerns automobiles. There may be some class experts on this topic.

B. *Teaching Understanding I - 3. Penal Technique*

QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed by prohibiting certain conduct by punis when it occurs?
- How do legal officials and private citizens take part in the operation of this le
- How might the penal technique be made to work better?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOU

1. The penal technique at work on a social problem.

(a) Have class identify ways the penal technique might work on the problem of highway safety.

—Consider provisions prohibiting and punishing the following: Does the class think they are fair and reasonable? Should they be more, or less, harsh? This should generate some lively discussion.

- speeding
- drag racing
- drunk driving
- interference with traffic control devices
- causing another's death by reckless driving

(b) Assign pupils in class the task of collecting for class study the primary resource material that illustrates the penal technique at work on the problem of highway safety.

Here again, a series of examples a
tions is presented. With the help
similar examples, the class will wa
this legal technique generally get
who operates this technique, other
legal technique treats, and possib
this legal technique.

Law's penal resource approaches a
mainly by defining activity which
and discouraging such activity by
it happens. This primary functio
technique is commonly known as its
tion; if antisocial acts result
will in theory be deterred from en
activity. Some manufacturers are
the effect on others of dumping ra
into a river or billowing black sm
but if these activities result in
outweigh the advantages of pollut
social industrialist may be disco
ting. Likewise, the individual w
with the dangers to himself and o

EACH UNDERSTANDING

ssary social tasks are performed by prohibiting certain conduct by punishing violators
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gal officials and private citizens take part in the operation of this legal technique?

the penal technique be made to work better?

ON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The penal technique at work on a social problem.

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of highway safety.

Here again, a series of examples and suggested questions is presented. With the help of these or similar examples, the class will want to consider how this legal technique generally gets at a problem, who operates this technique, other problems this legal technique treats, and possible shortcomings of this legal technique.

Law's penal resource approaches a given problem mainly by defining activity which creates the problem and discouraging such activity by punishment when it happens. This primary function of the penal technique is commonly known as its deterrence function; if antisocial acts result in penalties, people will in theory be deterred from engaging in such activity. Some manufacturers are not worried about the effect on others of dumping raw waste chemicals into a river or billowing black soot into the air, but if these activities result in penalties that outweigh the advantages of polluting, the antisocial industrialist may be discouraged from polluting. Likewise, the individual who is unconcerned with the dangers to himself and others of drunken

## DETAILED DESCRIPTION OF STRATEGIES

Suggest newspapers, magazines and possible interviews with local policemen.

NOTE: Where not otherwise indicated in the statutory law, violation of these provisions is a traffic infraction, as opposed to a criminal felony or misdemeanor, and is punishable only by fine.

### Pollution

(a) Have pupils identify ways the penal technique might work on the problem of pollution. Some possible areas to be considered are the following:

- polluting may come within the penal provisions prohibiting "public nuisances"
  - (for example, California Penal Code defining "public nuisance" as: "anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons" (California Penal Code, section 370 [1970]).

## DISCUSSION OF STRATEGIES AND RESOURC

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driving may be deterred from doing so if it results in an appropriate penalty. Penal laws against theft try to secure rights in property from those who would help themselves to the property of others. Laws making rape, murder, and assault, crimes try to protect the security of people by discouraging those who might otherwise do them physical harm. Laws punishing drug sales try to deter such activity by people who do not care about the social damage drugs may do.

Also, the penal technique serves to support the regulation technique. There may be a tendency to confuse the penal and the regulation techniques because there is an overlap. Often if one fails to conform to the guidance of the regulation technique, he may be faced with a penalty (the penal technique). If one proceeds to drive without meeting the standards to get a license, he may be arrested and punished. But there is an important difference in laws setting standards for driver licenses and laws, for example, prohibiting murder or theft. These laws perform different functions. The *regulation laws* set standards where *guidance is necessary* to inform people and direct and coordinate activity. Highways would be less safe if everyone on his own decided when he qualified to drive. On the other hand, with laws that are primarily *penal*, such as those prohibiting rape, the *function of the law is not primarily guidance;* almost everyone already knows that rape is wrong. Thus, the function of the penal technique is to deter people from antisocial activity which they know is wrong; the function of the regulation technique is to help inform people

—Excessive pollution may be a violation of specific penal laws

-excessive auto exhaust a misdemeanor

-violation of Water Pollution Control Act provisions subjects one to a penalty of from $250 to $2500 per violation and if such violation is willful, it constitutes a misdemeanor. Violation later is subject to a fine from $400 to $2500 or a maximum of 1 year in prison or both

-violation of the Oil Pollution Act of 1961 by certain discharges of oil into the sea is punishable as a misdemeanor by fine of $500 to $2500 and prison up to 1 year or both

(b) Assign class the task of collecting primary resource material that illustrates the penal technique at work on the problems of pollution. In line with the above assignment, assign the following as a class project: Write to the United States Attorney General requesting such information.

(c) The following questions and strategies are related to the penal technique:

—What are some further examples of the penal technique at work on the problems of highway safety or pollution? How does each example contribute to safer

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social activity. But when people p
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and supply guidance and standards to coordinate social activity. But when people purposefully disregard the regulation technique, they normally must confront penalties characteristic of the penal technique. While sanctions of the penal and regulation techniques are similar (fines, imprisonment), the moral disgrace and condemnation associated with the penalties of the penal technique are greater than with regulatory sanctions.

Questions on the Operation of the Penal Technique

Like the two techniques already discussed, various officials have roles in putting the penal technique to work. The legislature decides which activities are to come within the reach of the penal technique; it defines crimes. Public opinion, the executive, or specific events may influence the legislature in their process of defining what acts are crimes. Legislatures may respond to public hostility toward drug use with penal laws that harshly punish users, sellers, and possessors of drugs. The executive may present a bill to the legislature that would stiffen penal law of a particular sort, as President Nixon did with provisions to combat organized crime. Events like plane hijackings or campus riots stir legislatures to define certain antisocial acts as crimes.

Although the legislature decides what acts will be punished by the penal technique, actual operation of the penal technique is not left to legislators.

highways or better environment? Are there any other ways of ensuring highway safety other than legal technique (public conscience)?

—What are some examples of the penal technique working on other social needs or problems of our society? (Some areas to be considered are the problems of drugs and abortion.)

—Who decides to put the penal technique to work on given problems? Who actually operates this legal technique? How might the individual's influence be felt in the operation of the legal technique? Could they as minors take part in the penal technique?

—Why does the penal technique fail to prevent some accidents or some pollution? Is there such a thing as a bad law? (Pupils might wish to identify laws in their own school.)

Strategies

(a) Have students collect newspaper articles on crime and consider the diverse kinds of interests the penal technique tries to protect. It might be possible to have a debate: "Does the law tend more to protect the guilty rather than the law-abiding citizen?"

(b) Take class to visit a criminal trial.

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## DISCUSSION OF STRATEGIES AND RESOURCES

Private individuals have an important role in bringing some violations of the penal law to the attention of the police. The police try to stop people in the process of breaking penal laws and to apprehend those suspected of having committed crimes. From this point the prosecutor (district attorney) takes over. He brings the case before a judge. Further officials may be involved if the accused is convicted—probation officers, wardens, parole boards, etc.

The deterrent function of criminal law (i.e., discouraging antisocial activity by penalizing it) is not the only function that the penal technique performs. In theory, after certain criminals are convicted, they are to be *rehabilitated* at our correctional institutions. This process also serves to *isolate* antisocial people from society so they cannot do more harm. Though modern penal theory generally frowns on earlier retribution (revenge) theory of criminal law, orderly official sanctioning of "bad actors" often serves as a healthy substitute for private retaliation by the victims of crimes or their friends and family.

The penal technique, too, sometimes fails to work well in controlling antisocial conduct. Sometimes the legislature simply passes unwise penal statutes. In some states, it is a serious crime for unmarried consenting adults to have sexual relations. The marriage of a black and a white person was a crime in some states until the Supreme Court declared the laws unconstitutional in the 1960's. The wisdom of *some* drug laws is at least subject to debate. Even if all penal laws were sound, the penal technique

## DETAILED DESCRIPTION OF STRATEGIES

(c) Have a prosecutor visit the class to talk about the purposes of penal law. A panel could further question the guest after his talk.

(d) Have pupils view a film or filmstrip on the penal technique. Some possibilities are:

- *Justice Under the Law: The Gideon Case* 22 min. color. E.B.F.
- *Your Rights and What They Really Mean* (complete set of 6 color filmstrips with 3 cassettes)

(e) One of the great controversies today is whether to have gun control laws or not. Much controversy has been evoked about this topic. Have a classroom debate on one of these statements. Have pupils do a great deal of preliminary research before tackling a class debate.

- "Gun laws can't work since criminals don't obey laws"
- "All that is needed to solve our gun problem is strict legislation"
- "We have a crime problem, not a gun problem"
- "Only the National Rifle Association stands between this country and effective gun laws."

## DISCUSSION OF STRATEGIES AND RESOUR

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DISCUSSION OF STRATEGIES AND RESOURCES

would not be omnicompetent. Violators of these laws often "get away with it." It would be impossible to have enough police to catch all, or even most, of the people who drive while drunk, steal, drag race, pollute, murder, etc. Also, even where there are good penal laws there may be poor processes for their application. Accused people may sit in a New York City jail for a year waiting for a trial; convicted persons may be sent to correctional institutions that do more to turn them into hardened criminals than to correct them; or the penal laws may not be equally applied—the rich boy who possesses marijuana may get a quiet slap on the wrist, the poor boy may get 5 years.

Once students have been presented three different legal techniques, it might be helpful to contrast the relative effectiveness of the various techniques on the problems of highway safety and pollution. Also, they might consider the appropriateness of the various roles played by officials. Would courts be as well suited as legislatures to decide how public money of the benefit distribution technique should be spent or to decide what acts should be crimes? Would legislatures be as well suited as courts to try criminal cases or be as well suited as expert administrators to set specific regulations for pollution control or traffic control? Relevant criteria of comparative suitability include:

- Extent to which particular officials serve in an elected representative capacity and the appropriateness of leaving certain activity to the people's representatives (e.g., deciding what acts are crimes).

Module 2

DETAILED DESCRIPTION OF STRATEGIES

(For their research, urge pupils to use Readers' Guide to Periodical Literature and the periodical American Rifleman.)

DISCUSSION OF STRATEGIES AND RESO

- Isolation from political an and influence
- Degrees of expertise in the

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See text, p. 49.

ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

- Isolation from political and popular pressure and influence
- Degrees of expertise in the matter in question.

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See text, p. 49.

B. *Teaching Understanding I - 4. Private Remedy Technique*

QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed by allowing lawsuits?
- How do legal officials and private citizens take part in the operation of this
- What are some problems encountered in use of the private remedy technique?

DETAILED DESCRIPTION OF STRATEGIES

1. Private remedy technique at work on a social problem.

Highway Safety

(a) Have a local attorney speak to the class on the subject of suing a negligent driver to recover for personal injuries suffered in an auto accident.

(b) Take class to visit a local court to see the trial of an actual automobile negligence suit.

(c) Work with class on a case study of a lawsuit arising from an auto accident. One possibility is the following:

—AEP Public Issues Series, *The lawsuit*. (1968) Case study.

(d) Have some of the pupils devise a skit where they may role-play the characters involved in an actual lawsuit. Include plaintiff, defendant, lawyers, judges, witnesses, and jury. In this way, you may involve the entire class. (A simulation based on *The Lawsuit* is available from Clark Abt Company. See page 14.)

DISCUSSION OF STRATEGIES AND RE

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*rstanding I - 4. Private Remedy Technique*

REACH UNDERSTANDING

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DISCUSSION OF STRATEGIES AND RESOURCES

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The private remedy technique in action is commonly known as the private lawsuit. The best introduction to the private remedy technique may be to visit the courtroom. Alternatively, a film, record, or booklet presenting a case study of a lawsuit may be available. Or a practicing lawyer may be willing to visit the class to explain the role of the private remedy technique in repairing injuries.

Once students are introduced to the private remedy technique, they again might consider how this technique generally gets at a problem, who operates this technique, other problems this legal technique treats, and possible shortcomings of this technique.

This technique differs from the three already presented. Its main function is repair of or *compensation* for damages that have occurred. A lawsuit occurs when one private party claims to have been wrongfully damaged by another. If the parties cannot work out a settlement between themselves, then the suing party (the plaintiff) can bring the sued party (the defendant) before a court. The court decides if the plaintiff's claim has merit, and then decides

DETAILED DESCRIPTION OF STRATEGIES

(e) Have class view a film on a private lawsuit. (Check your local film library if resource listed below is not easily available.)

—"Witness to the Accident," Indiana University Documentary. (30 min. drama of a lawsuit based on an auto injury case.)

Pollution

(a) Invite a speaker from an environment protection interest group to speak to the class on the subject of lawsuits as a means of combating pollution (Sierra Club, Audubon Society, etc.).

(b) Discuss with class the following case where a private citizen sued a polluter. (See page 36.)

(c) Have members of class role-play a meeting of a conservation group trying to decide whether to sue a local polluter who employs most of the local work force. Include in the role-playing the chief executive of the pollution-causing company, some of the local wives of the plant workers, as well as the officers of the conservation group. Rutile and the Beach, from the High School Geography Project is useful for this. (See page 78.)

(d) Have class view a film or filmstrip on pollution. (See those titles already listed in this module.) Check your local audiovisual center for other possibilities.

DISCUSSION OF STRATEGIES AND RESOURC

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the terms of settlement by itself or with the help of a jury. Some common types of injuries for which private parties sometimes use the private remedy technique are injuries resulting from others' carelessness (negligence), injuries to reputation (written libel or spoken slander), injuries caused by attacks (assault and battery), injuries caused by interference with property (nuisance or trespass). Harmful conduct may give rise to a civil suit between private parties to recover money (damages) or to have the conduct stopped (enjoined). Such conduct (for example, an assault or careless driving) may *also* be a crime. It may also give rise to prosecution by the state; i.e., use of the penal technique. To the extent the penal technique also comes into use, the focus is no longer repair, but punishment to deter others from similar conduct.

This legal technique aims at remedying one individual's harm to another by ultimately issuing a court order saying either *pay* for the harm caused (a judgment) or *stop* the harmful activity (an injunction).

### Questions on the Operation of the Private Remedy Technique

The decision to initiate this technique rests almost exclusively in the hands of private individuals who claim to have been injured by activities of others. This legal technique is operated by individual disputants, their lawyers, and the courts.

DETAILED DESCRIPTION OF STRATEGIES

(e) The following questions are related to the workings of the private remedy technique:

- In dealing with the problems of highway safety or pollution, is the function of the private remedy technique primarily preventive or reparative?
- What are some other examples of kinds of injuries that may give rise to a person using the private remedy technique?
- Who decides to put the private remedy technique to work on a given problem? What is the individual's role in the operation of this legal technique?
- Why might private lawsuits be of limited effect in rectifying injuries caused by accidents or pollution?

(Note to teachers: Answers to suggested questions listed above can be found by reading the section entitled, "Discussion of Strategies and Resources.")

DISCUSSION OF STRATEGIES AND RES

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## DISCUSSION OF STRATEGIES AND RESOURCES

Sometimes the lawsuit against the party at fault provides an efficient way to remedy harm done one person by another. However, it may be informative to consider circumstances where this legal technique is not effective at all. (1) With some injuries it may be very hard to determine who was at fault. (2) With 14 million auto accidents per year and pollution injury to almost everyone, private lawsuits may be an impossible administrative burden on the courts; in some places it may take years of waiting to get before a court. (3) The remedies available in private lawsuits may not be suitable (e.g., money damages for negligently causing the death of a child, enjoining pollution when the polluting activity serves to employ the entire community). (4) The person wishing to sue may not be able to afford a lawyer to take his case to court (counsel is only constitutionally guaranteed in serious criminal cases). (5) The person being sued may simply have no money with which to pay damages or even to get a lawyer to defend himself. (6) The case may not be determined on its own merits, but, instead, on the question of which party hired the most able lawyer.

Module 2

B. *Teaching Understanding I - 5. Private Arrangement Technique*

QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed through private legal arrangements?
- How does the law support certain private arrangements?
- What are some problems encountered in leaving certain social tasks to private le

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESO

1. Private arrangement technique at work on a social problem.

Highway Safety

(a) Discuss with class legally supported private arrangements that work on the problem of highway safety. Some of the following items may be discussed:

—facilitation of organized private efforts to promote highway safety

-legal recognition: corporate tax-free status of AAA

-AAA programs: safety education, research, movies, publications, etc.

—legal recognition and backing up private contract arrangements to pay for damages caused by accidents

-liability insurance arrangements

-collision insurance arrangements

-health insurance arrangements

(b) Teacher might implement private arrangement techniques in the following ways:

—Consumers Union reports on automobile safety

In the private arrangement techni
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make enforceable contracts to cor
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Then there are social problems w
partly by private arrangements
techniques. The problems of hig
air pollution control illustrate

## *tanding I - 5. Private Arrangement Technique*

EACH UNDERSTANDING

ssary social tasks are performed through private legal arrangements?

the law support certain private arrangements?

some problems encountered in leaving certain social tasks to private legal arrangements?

ON OF STRATEGIES

1. Private arrangement technique at work on a social problem.

way Safety

with class legally sup-
rivate arrangements that work
roblem of highway safety. Some
ollowing items may be discussed:

tation of organized private
s to promote highway safety

recognition: corporate tax-
status of AAA

programs: safety education,
rch, movies, publications, etc.

recognition and backing up pri-
ontract arrangements to pay
mages caused by accidents

lity insurance arrangements

sion insurance arrangements

th insurance arrangements

might implement private arrange-
chniques in the following ways:

mers Union reports on automobile
y

DISCUSSION OF STRATEGIES AND RESOURCES

In the private arrangement technique, private judgment, private decisions, and private arrangements are at the forefront. Many social tasks are best tackled through means of this kind rather than through the various forms of direct official action. For example, our society discharges the task of producing and distributing goods largely through private ordering. Thus, it is largely through the interplay of private market forces that choices are made which determine what goods are produced and how they are distributed. In some legal systems, these basic determinations are made by legal officials rather than through private arrangements.

With respect to some social activities, the private arrangement technique is wholly inappropriate. For example, private parties ought not to be allowed to make enforceable contracts to commit crimes. This would encourage anti-social conduct rather than facilitate constructive social activity.

Then there are social problems which can be attacked partly by private arrangements and partly by legal techniques. The problems of highway safety and of air pollution control illustrate this point. In

- —Local chapter of American Automobile Association for publications and speakers.
- —Local insurance agent and companies for material and speakers.

Pollution

(a) Discuss with class legally supported private arrangements that work on the problem of pollution. The following areas might be included:

- —facilitation of organized private efforts to promote decent environment; e.g., legal recognition for such organizations as the Sierra Club and the Environmental Defense Fund, and permission to use the courts to achieve the ends that have been sought by these groups.
- —various tax incentives to influence private decisions to clean up environment; e.g., special tax deductions for purchasing air pollution control equipment, tax exempt status for the Environmental Defense Fund, tax deductions for donors to certain organizations.

(b) The following questions and strategies are related to the workings of the private arrangement technique:

- --What are some further examples of the private arrangement technique at work

discussing these, it is impor
closely at some of the detai
private arrangement techniqu
sion, this legal technique c
elements.

First, it *grants permission*
private organizations to mak
arrangements and to carry on
kinds. Thus, persons may be
make contracts, leases, will
organizations of a certain k
vantages of joint action (gr
greater intellectual resourc
of effort, etc.) The AAA in
field is one such organizati
Defense Fund in the field of
another. These organization
provides for their formation
law permits the various acti
organizations carry on.

Second, law *facilitates* the
organizations. By giving ta
it helps them to continue.
collect dues and to charge f
their activities. By helpin
interfering with their activ
not only recognizes their ri
activities, but also affirmat
activities. Thus, if someon
either violently or by legal
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the legal system could be us

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ated to the workings of the private
ment technique:

are some further examples of the
te arrangement technique at work

discussing these, it is important to look more closely at some of the detailed workings of the private arrangement technique. In its legal dimension, this legal technique consists of three basic elements.

First, it *grants permission* to private persons and private organizations to make certain binding arrangements and to carry on activities of certain kinds. Thus, persons may be granted the right to make contracts, leases, wills, etc. and to form organizations of a certain kind to gain the advantages of joint action (greater economic resources, greater intellectual resources, greater continuity of effort, etc.) The AAA in the highway safety field is one such organization. The Environmental Defense Fund in the field of pollution control is another. These organizations exist because law provides for their formation. Even more important, law permits the various activities these private organizations carry on.

Second, law *facilitates* the activities of such organizations. By giving tax exempt status to them, it helps them to continue. By allowing them to collect dues and to charge fees, it facilitates their activities. By helping to prevent others from interfering with their activities, the legal system not only recognizes their right to carry on certain activities, but also affirmatively protects these activities. Thus, if someone sought to interfere, either violently or by legal techniques, with the work of the AAA or the Environmental Defense Fund, the legal system could be used to intervene.

on the problem of highway safety or pollution? How does each example contribute to safer highways or better environment?

- What are some examples of the private arrangement technique working on other social needs or problems of our society?
- Who decides to put the private arrangement technique to work on given problems? Who actually operates this legal technique? How might the individual's influence be felt in the operation of this legal technique?
- What are some possible defects in the workings of the private arrangement technique?

Strategies

(a) Present for the class to examine an example of a binding private legal arrangement in written form; i.e, a sales contract for a TV or auto, a will, a lease, a mortgage, an insurance contract, corporate charger, etc. As a teacher, you may have been involved in many legal arrangements. Based on your own experience, you might discuss some of the following legal arrangements. You might use some of the following examples:

- employment contract
- loan agreement
- time sales agreement
- lease
- mortgage

Third, the legal system promotes p
by *supporting* them when they brea
example, private insurance compani
tracts with car owners which provi
who are hurt in highway accidents
to certain sums. When these owner
into such arrangements seek paymen
fully refused, they may turn to th
technique and secure judicial judg
insurance companies.

Questions on the Operation of the
Arrangement Technique

As with the private remedy techniq
arrangement technique places heavy
role of the individual citizen. T
niques simply do not perform their
if private individuals do not take
use them. In the private arrangem
private individuals actually "make
rights and duties (i.e., the legal
valid employment contract, a will,
contract, a lease, a mortgage, a l
etc. are defined not by legislativ
rule makers, but by the parties to
arrangements. Similarly, the purp
and activities of a corporation or
like the AAA, the Environmental De
NAACP, the American Legion, the 4-
etc. are not defined and limited b
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Thus, much important social inter
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ments. Based on your own experi-
ou might discuss some of the
ng legal arrangements. You might
e of the following examples:

yment contract
agreement
sales agreement
age

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Third, the legal system promotes private arrangements by *supporting* them when they break down. For example, private insurance companies may make contracts with car owners which provide that car owners who are hurt in highway accidents shall be entitled to certain sums. When these owners who have entered into such arrangements seek payment and are wrongfully refused, they may turn to the private remedy technique and secure judicial judgments against the insurance companies.

### Questions on the Operation of the Private Arrangement Technique

As with the private remedy technique, the private arrangement technique places heavy emphasis on the role of the individual citizen. These legal techniques simply do not perform their social functions if private individuals do not take the initiative to use them. In the private arrangement technique, private individuals actually "make the law." The rights and duties (i.e., the legal content) under a valid employment contract, a will, an insurance contract, a lease, a mortgage, a loan, a credit sale, etc. are defined not by legislative or administrative rule makers, but by the parties to the private arrangements. Similarly, the purposes, structure, and activities of a corporation or an association, like the AAA, the Environmental Defense Fund, the NAACP, the American Legion, the 4-H Club, the YMCA, etc. are not defined and limited by officials, but by the terms of a charter which has been drawn up by the private directors of the organization.

Thus, much important social interaction leaves legal officials in the background; legal officials merely set the rules for legally effective formation of

—will
—insurance agreement

(Some of the pupils in class should be able to relate some information based on their own family's experiences.)

(b) Have students role-play a meeting of local citizens where they discuss the pollution of a lake or river and what they can do about it. You might include in the role playing, people who live on the lake, teenagers who are being deprived the right of swimming in the polluted waters, and the executive of the oil company who is, to a great degree, responsible for the polluted waters.

(c) Have pupils role-play a group of people trying to set up a commune. How might the legal system fail to facilitate this activity? Explain first the meaning of the commune. Include all types of people from all walks of life to make sure there is interaction.

(d) Have class divide in groups and draft a private legal arrangement; for example, a contract for employment as a paper boy, a lease for an apartment, a will, a 25-year mortgage on a house.

private arrangements and stand rea
arrangements if they break down.

Like the other techniques, the pri
technique has possible defects. T
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out private arrangements may be ov
that the only ones who really gai
collect legal fees. Arrangements
carrying out wills at death may be
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By leaving distribution and exchan
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NOTE: Drafting such arrangements in real life normally calls for the assistance of a law
should not be led to believe that they are making the "real thing"; in fact, minor
capable of making any legal arrangements. The purpose of this exercise is to demo
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an apartment, a will,
ortgage on a house.

private arrangements and stand ready to uphold such arrangements if they break down.

Like the other techniques, the private arrangement technique has possible defects. The ground rules that the legal system sets up for making and carrying out private arrangements may be over-technical so that the only ones who really gain are those who collect legal fees. Arrangements for making and carrying out wills at death may be so complex, time consuming, and expensive that this private arrangement is not a satisfactory one for passing property on at death. Or allowing tax advantages for private efforts on social problems is not a very helpful arrangement if the tax law is so complicated that it can only be understood and used with much expensive professional legal assistance.

Also, the legal system may simply fail to facilitate organized private efforts to combat social problems. The NAACP on occasion has been discouraged by legal officials in its orderly efforts to combat segregation; in 1970 the Federal government considered taking away the tax exempt status of environmental protection organizations.

By leaving distribution and exchange of goods and services primarily to private arrangements, as our society does, some social needs are left unattended. In the richest society in history, we have people who are starving and dying of diseases whose cures are known.

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aking any legal arrangements. The purpose of this exercise is to demonstrate how much
miliar law is made and administered by private parties and their lawyers.

Module 2

## RESOURCES*

Bennett, Robert and Newman, Thomas. *Poverty and welfare*. Justice in Urban Ameri
Boston. Houghton Mifflin. 1969.

United States Code, Title 42, Public Health and Welfare: "Federal Air Quality Co
Act of 1967." Sections 1857-1857L.

(Regulating emissions other than auto exhaust)

Through this act, the Congress of the United States, under its power to reg
interstate commerce (since air pollutants are very much related to intersta
commerce; i.e., movement of air pollutants across state lines), set up cert
standards through which all levels of government could cooperate for the pr
and control of air pollution; e.g., standards to achieve higher level of ai
quality, standards set concerning emissions of substances from vehicles or
engines, hearings for failures to abate pollution.

McKinney's Consolidated Laws of New York. - "Public Health Law: State Air Pollut
Control Act." Vol. 44, Sections 1264 and following.

(Regulating emissions other than auto exhaust)

...establishment of air pollution board by the State of New York for the ex
purpose of maintaining a reasonable degree of purity of the air resources c
State.

--In conjunction with establishment of the board, the State will appoint a
health who will regulate the activities of the board. This same commissi
health has the power to do many things including the following:

a) enter and inspect any property and inspect any motor vehicle for the p
investigating either an actual or suspected source of air pollution
b) determine by means of field studies and sampling the degree of air pol
in New York State
c) receive moneys from Federal government and then make provisions as to
money would be spent for the purpose of air pollution control studies
d) do whatever is necessary to enforce codes, rules, and regulations rega
pollution

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*Direct quotations from statutes are indicated by the use of quotation marks. Other st
summaries or paraphrases of the statute listed.

# RESOURCES*

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a) enter and inspect any property and inspect any motor vehicle for the purpose of investigating either an actual or suspected source of air pollution
b) determine by means of field studies and sampling the degree of air pollution in New York State
c) receive moneys from Federal government and then make provisions as to how the money would be spent for the purpose of air pollution control studies on research
d) do whatever is necessary to enforce codes, rules, and regulations regarding air pollution

ions from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

*Vanishing Air*. New York. Grossman Publishers. 1970.

This is a report of the Ralph Nader Study Group on Air Pollution and thei
for more government control.

The Foreword of the text by Ralph Nader is an excellent summary of the pur
the group and some of Nader's own thoughts on air pollution and role of c
in their continuation of biological trespass on citizens by fighting gove
co-opting administrators, and refusing to let people know the facts.

Note to teachers: The reading level might be a little difficult for eigh
pupils. Certain pupils might wish to use it as a research source. Teach
use it as background material.

New York Vehicle and Traffic Law.

(Prohibited unsafe highway activity)

Section 1180 - Speeding

--a person is prohibited from driving his vehicle at a speed that is gr
than is reasonable or prudent

--certain speed limits within school zones must be observed

--(he) cannot drive in excess (5 miles an hour) of maximum speed limits
area (normally not in excess of 55 miles an hour unless otherwise
set by state law)

Section 1181 - Drag Racing

No races or contest for speeds can be held according to this law, nor c
person engage or aid any motor vehicle speed contest on the highway unl
secures permission from the proper authorities in the area where the ra
being sponsored. Not only must a permit be secured, but also the entire
over which the race is to be run must be fully and efficiently patrolle
violation of this law would be considered a misdemeanor.

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### Section 1192 - Drunk Driving

The person who operates a motor vehicle or motorcycle while his ability t
it is impaired is guilty of a traffic infraction. There can be a convicti
a plea of not guilty if a chemical test is given within 2 hours of the de
arrest and ten-hundredth of 1 per centum or more by weight of alcohol is
his blood; if the defendant is under 21 years of age, and the amount in t
blood is five-hundredth of 1 per centum there can be a conviction. The m
or chemical analysis may be of breath, blood, urine, or saliva.

### Section 1115 - Interference with Official Traffic Control Devices, Railroad or Signals, and other Highway Mechanisms

--any person is prohibited by law without lawful authority to alter, defa
injure, knock down, cover, remove, or in any way interfere with any traf
device or railroad sign. This would also include any lamppost, walk, t
or other object on a highway right of way. Deface would include damagi
destroying, erasing any of the above-mentioned objects by the use of ch
crayon, paint, stain, ink, or other similar material.

## New York Penal Law.

### Section 125.10 - Causing Another's Death by Reckless Driving

--states that a person is guilty of criminally negligent homicide when wi
criminal negligence he causes the death of another person [according t
the previously stated definition, "criminal negligence" is in a sense
form or degree of recklessness].

AEP Public Issues Series. *Rights of the accused*. 1968. (Case study--negli
homicide case.)

Bassiouni, Cheril, Lawrence, Michael, Starr, Isidore, & Summers, Robert. *Cri*
*justice*. Justice in Urban America Series. Boston. Houghton Mifflen Co.

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ssiouni, Cheril, Lawrence, Michael, Starr, Isidore, & Summers, Robert. *Crimes and Justice.* Justice in Urban America Series. Boston. Houghton Mifflen Co. 1970.

Martin vs. Reynolds Metal Company. Pacific Reporter. Vol. 342. pp. 790-798.

(Pollution and private lawsuits)

In this particular lawsuit, the Martins, who owned a cattle ranch, sued the Re Metal Company because they believed that their aluminum reduction plant nea Troutdale, Oregon caused certain fluoride compounds in the form of gases an particles to become airborne and settle on their land, making it impossible them to raise livestock from Aug. 22, 1951 to January 1, 1956. They furthe argued that their cattle were poisoned by taking in the fluorides which had contaminated the grain and water on their land. They felt they were entitl to damages in the amount of $450,000 not only for loss of land, but because land had deteriorated due to the growth of brush trees and weeds, since the land could not be used for grazing purposes.

The Supreme Court ruled upon appeal of the aluminum company that, in fact, th manufacturing operation of aluminum reduction had caused certain chemicals to become airborne and then settle on land that thus became unfit for grazi This caused the water to become unfit for livestock consumption.

The Martins were awarded $71,500 for the loss of use of their land and were $20,000 for the deterioration of their land.

**Berger, Robert and Teplin Joseph.** *Law and the consumer.* Justice in Urban Ameri Boston. Houghton Mifflin Company. 1970.

**Summers, R., Campbell, B., & Bozzone, J.** *Law in our society, our laws and legal process -- Do we need them?* Unit II - Chapter One - Lessons 1-6.

**Mehlinger, H.D. & Patrick, J.J.** *American political behavior.* Book II - Unit Fo Decisionmakers."

A very well-organized program for examining the lawmaking process. Althou is in much greater depth than this alternative strategy suggests, teachers wil the detailed development helpful in planning.

**High School Geography Project.** *Rutile and the beach.* Unit 5 - "Habitat and Res The Macmillan Co. 1970.

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acmillan Co. 1970.

Module 2

UNDERSTANDING II

THE EFFECTIVENESS OF LAW IN DEALING WITH SOCIAL NEEDS AND PROBLEMS DEPENDS IN PAR
THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

A. *Explanation of Understanding II*

Understanding II introduces the important concepts that (1) particular legal tec
suited for certain problems than other techniques, and (2) the managers of a legal system
the appropriate legal technique(s) to work on a problem, and this may help explain why th

The procedures and resources section of Understanding II seeks in three ways to
to a society of using the appropriate legal technique(s). First, once students have stud
contributions of each legal technique in treating the problem of pollution or highway saf
briefly consider the kinds of difficulties that would arise if only a single technique we
action on the problem. Next, the contrast of the prohibition years and alcohol beverage
provides a dramatic example in American history of attacking a social problem with inappr
(overemphasis of the penal technique). Finally, the materials suggest reviewing a conte
consider whether our legal system today is putting the most effective combination of tech
solve it.

B. *Teaching Understanding II*

QUESTIONS TO REACH UNDERSTANDING

- Why are some legal techniques more appropriate than others in working on a parti
problem?
- How might putting different legal techniques to work on a social problem result
effective treatment of the problem by the legal system?

II

ETIVENESS OF LAW IN DEALING WITH SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING
)PRIATE LEGAL TECHNIQUE(S) TO WORK.

*f Understanding II*

anding II introduces the important concepts that (1) particular legal techniques are better
in problems than other techniques, and (2) the managers of a legal system may fail to put
legal technique(s) to work on a problem, and this may help explain why the problem persists.

cedures and resources section of Understanding II seeks in three ways to teach the importance
using the appropriate legal technique(s). First, once students have studied the distinct
each legal technique in treating the problem of pollution or highway safety, they might
the kinds of difficulties that would arise if only a single technique were called into
oblem. Next, the contrast of the prohibition years and alcohol beverage control today
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our legal system today is putting the most effective combination of techniques to work to

*erstanding II*

REACH UNDERSTANDING

some legal techniques more appropriate than others in working on a particular social
?

ht putting different legal techniques to work on a social problem result in more
ve treatment of the problem by the legal system?

## DETAILED DESCRIPTION OF STRATEGIES

(a) In class discussion, investigate with pupils what might be the impact on law's effectiveness in treating the problem of highway safety or pollution *if* the legal system channeled all its efforts into one of the legal techniques and suspended use of the others. Divide the class into four groups; each with a group leader should consider one of the following series of questions and report back to the entire class their opinions.

- —What if the legal system effectively apprehends and severely punishes all people who cause any traffic accidents, but does not concern itself with spending for safety; regulating drivers, autos, and traffic; providing for private remedies; or promoting private safety programs?
- —What if the legal system closely regulates drivers, autos, and traffic control devices, but fails to spend for safe highways, to penalize those who intentionally drive unsafely, or to allow remedial lawsuits?
- —What if the legal system combats pollution only by allowing private parties who are injured to sue polluters, and does not bother to set effective regulatory standards, spend public money on clean water and air, or penalize those who pollute?

## DISCUSSION OF STRATEGIES AND RESOU

The survey and analysis of legal t
on particular problems of Understa
indicate to students something of
*distinctive character* of the resou
a legal system to draw on. The re
procedures of Understanding II dir
the matter of calling on the right
combination of resources to deal e
problem. Some legal techniques ar
than others to deal with particula
problems. Yet there is no assuran
gers of the legal system will call
into play in the most productive w

One way the legal system could fai
fectively in addressing a social p
overemphasize reliance on a parti
nique and not approach the problem
sources that might more appropriat
Thus, students might consider the
only one of the legal techniques, t
of the others, were set into motio
the problems that has been under e

It may be useful to examine the tr
pollution or highway safety proble
single legal technique. By contra
ment of the alcohol abuse problem
the prohibition years, students ma
istic notion of the possibility of
of a social problem by failure to
legal resources to work on the pro
provides an excellent example of t
effects of unwise allocation of le

## OF STRATEGIES

scussion, investigate with
might be the impact on law's
ss in treating the problem of
ety or pollution *if* the legal
neled all its efforts into
legal techniques and suspended
others. Divide the class into
; each with a group leader
ider one of the following
uestions and report back to
class their opinions.

he legal system effectively
s and severely punishes all
o cause any traffic accidents,
not concern itself with spend-
afety; regulating drivers,
d traffic; providing for pri-
dies; or promoting private
ograms?

he legal system closely regu-
vers, autos, and traffic
evices, but fails to spend for
ways, to penalize those who
ally drive unsafely, or to
edial lawsuits?

he legal system combats pollu-
by allowing private parties
njured to sue polluters, and
bother to set effective regula-
dards, spend public money on
er and air, or penalize
pollute?

## DISCUSSION OF STRATEGIES AND RESOURCES

The survey and analysis of legal techniques at work on particular problems of Understanding I should indicate to students something of the *variety* and *distinctive character* of the resources available for a legal system to draw on. The resources and procedures of Understanding II direct students to the matter of calling on the right legal resource or combination of resources to deal effectively with a problem. Some legal techniques are more appropriate than others to deal with particular aspects of problems. Yet there is no assurance that the managers of the legal system will call law's resources into play in the most productive way.

One way the legal system could fail to use law effectively in addressing a social problem would be to overemphasize reliance on a particular legal technique and not approach the problem with legal resources that might more appropriately meet the need. Thus, students might consider the consequences if only one of the legal techniques, to the exclusion of the others, were set into motion to combat one of the problems that has been under examination.

It may be useful to examine the treatment of the pollution or highway safety problems by use of single legal technique. By contrasting law's treatment of the alcohol abuse problem during and after the prohibition years, students may get a more realistic notion of the possibility of legal mishandling of a social problem by failure to put appropriate legal resources to work on the problem. Prohibition provides an excellent example of the dual detrimental effects of unwise allocation of legal resources in

—What if the legal system combats pollution only by penalizing polluters, without use of the regulatory, distributive, or remedial techniques?

(b) Discuss with pupils a case in American history where an imprudent choice of legal techniques to work on a social problem resulted in aggravation of the problem: overemphasis of penal "prohibition" and the problem of alcohol abuse. An excellent example of this is the era of prohibition. Have pupils look up in the U.S. Constitution, Amendment XVIII (1919) (prohibition) and Amendment XXI (1933) (repeal). Then discuss with class the effects on the problem of alcohol abuse of nearly exclusive reliance on a legal technique (the penal technique) that alone was not appropriate to combat this problem:

—ineffective treatment of the problem

—promotion of general disrespect and nonsupport of the law

-You might bring out the "speakeasy era"; the period of the "Feds"; Elliot Ness and the "Untouchables"; "Bath Tub Gin"

—Contrast the current legal techniques in use and the legal system's relative effectiveness in treating the social problem of alcohol abuse.

-*regulation* of manufacture and sale of alcoholic beverages (license, age limits, etc.)

meeting social problems: (1) relat
treatment of the problem, and (2) p
public disrespect for the law.

With this background, the class migh
critical analysis of the legal syst
of some contemporary social problem
analysis might consider (1) whether
niques at work could be used more e
whether a different combination of
distribution of emphasis among lega
would result in more effective trea
problem, and (3) whether important
problem are beyond the reach of all
resources.

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ion only by penalizing polluters,
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ast the current legal techniques in
nd the legal system's relative ef-
veness in treating the social problem
cohol abuse.

*lation* of manufacture and sale of
holic beverages (license, age limits,
)

meeting social problems: (1) relatively ineffective treatment of the problem, and (2) promotion of public disrespect for the law.

With this background, the class might undertake a critical analysis of the legal system's treatment of some contemporary social problem. Such an analysis might consider (1) whether the legal techniques at work could be used more effectively, (2) whether a different combination of resources or redistribution of emphasis among legal techniques used would result in more effective treatment of the problem, and (3) whether important aspects of the problem are beyond the reach of all of law's resources.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

-*penal* provisions for not conforming to regulated standards

-*spending* on rehabilitation centers promoting *private* programs (Alcoholics Annonymous [AA])

(c) Ask pupils to consider if there are any other legal methods that might be used to help solve the problem of alcohol abuse.

(d) Analyze in class some other social problems (for example, the drug abuse problem, the crime in the streets problem, the abortion problem) in terms of the following: Call on individual pupils to enlist their opinion. One member of the class may serve as master of ceremonies, the class may decide on one of the above mentioned problems and an open forum could be conducted based on the use of the following questions:

—What *are* the main legal techniques in use to deal with the problem?

—What *should be* the main legal techniques in use to deal most effectively with the problem?

—Does the present allocation of legal techniques at work on the problem result in:

-ineffective treatment of the problem?

-a disrespect for the law?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOUR

—Have students make a comparison of how social problems are solved with how medical problems are solved. What "tools" do doctors use to cure patients? Are all tools always appropriate?

## IPTION OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

Module 2

## RESOURCES*

McKinney's Consolidated Laws of New York - "Alcoholic Beverage Control Law." Vol

### Section 2 - Statement of State's policy in regulating this area

"It is hereby declared as the policy of the state that it is necessary to re and control the manufacture, sale and distribution within the state of alcoh beverages for the purpose of fostering and promoting temperance in their con tion and respect for and obedience to law."

### Section 17 - Power, functions, duties of regulatory board of the State Liquor Aut

--Under this section are spelled out some of the functions, powers, and dutie the State Liquor Authority. They include the following:

a) either issuing or refusing to issue liquor licenses
b) to revoke liquor licenses for just cause
c) to inspect any premises where alcoholic beverages are manufactured or s
d) to stop during times of emergency the sale of alcoholic beverages

### Section 65 - Regulates who may buy alcoholic beverages

All persons in New York State, no matter what their race, color, creed, or na origin, may according to law buy alcoholic beverages except for:

a) any minor under the age of 18
b) any intoxicated person or any person who seems to be under the influenc liquor
c) any habitual drunk and who is known to be such by the person dispersing alcoholic beverages

### Section 103 - Regulating how alcohol is manufactured

Sets up specific regulations whereby the manufacturer may produce and distri alcoholic beverages. They include the size of the containers, the type of t the goods may be delivered in, and a complete description with fingerprints o employees along with their photographs which can not be less than 2 by 2 inc in size.

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*Direct quotations from statutes are indicated by the use of quotation marks. Other s are summaries or paraphrases of the statute listed.

# R E S O U R C E S*

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## Section 130 - Punishing those who disregard these regulations

This particular section of the Alcoholic Beverage Control Act specifically states that any person who lies in application for a liquor license or attempts to sell liquor while his license is suspended is guilty of a misdemeanor. The guilty person may be subjected to a maximum fine of $1,200 or a maximum jail sentence of 1 year.

UNDERSTANDING III

NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFF

A. *Explanation of Understanding III*

The law at work in various ways is not the only force at work in confronting socia
Private individuals without compulsion, direction, encouragement, or assistance from the la
with relieving or avoiding many of the social problems that law confronts. Perhaps the sin
force at work on the problem of highway safety is individual interest in self-preservation.
from this force, law would be of limited effect. However, it is also unlikely that any com
legal forces could satisfactorily treat problems of highway safety without help from the le
Understanding III briefly surveys some nonlegal forces that contribute to the legal system'
then considers how both legal resources and support from nonlegal forces are necessary for
fronting social problems.

B. *Teaching Understanding III*

QUESTIONS TO REACH UNDERSTANDING

- What are some nonlegal factors that work on the same problems that law works on?
- How is law made more effective when it works with the support of such nonlegal fac
- How is law made less effective when it works without support of such nonlegal fact

3

III
SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

*of Understanding III*

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the problem of highway safety is individual interest in self-preservation. Without support
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*erstanding III*

REACH UNDERSTANDING

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law made more effective when it works with the support of such nonlegal factors?

law made less effective when it works without support of such nonlegal factors?

Module 2

## DETAILED DESCRIPTION OF STRATEGIES

(a) Consider in class discussion some reasons (nonlegal) why people on their own initiative act in a way to prevent and remedy traffic accidents and pollution.

- —desire for self-preservation and perception of mutual advantage
- —moral consciousness and respect for other human beings
- —desire to avoid "unofficial" criticism
- —desire for economic advantage

Since many teenagers do not like to brag publicly about some of their good deeds, ask them to write anonymously and hand in some actions they have taken to alleviate some social problem in their community. Without personal references, you might read some of their descriptions to prove that some of the above reasons motivated their actions.

(b) Ask students to make a list of examples of how each of these nonlegal factors *may* contribute to reducing the problems of highway safety or pollution. For example:

- —some people drive "defensively" and safely because they see this as necessary for survival

## DISCUSSION OF STRATEGIES AND RESOU

The persistence of many social pro simply the failure of the legal sy forces may contribute to this. On some important nonlegal forces are ing the same problems law addresse such as those suggested not only s problems like highway safety and p are often a necessary prerequisite are to be effective.

Students might identify some impor that assist law by considering the tions some people might have abou vironment and reckless driving. nonlegal forces that also work on students should consider the exter nonlegal forces helps or hinders the problems. Legal efforts to t late, or penalize to reduce a pro be relatively inefficient if peop perceive the problem to be no imm themselves or others, (2) are unc tions of the problem, and (3) fin disregard the problem.

## TION OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

The persistence of many social problems is often not simply the failure of the legal system. Nonlegal forces may contribute to this. On the other hand, some important nonlegal forces are at work on reducing the same problems law addresses. Nonlegal forces such as those suggested not only serve to relieve problems like highway safety and pollution, but they are often a necessary prerequisite if legal efforts are to be effective.

Students might identify some important nonlegal forces that assist law by considering the personal reservations some people might have about fouling the environment and reckless driving. Having identified nonlegal forces that also work on these problems, students should consider the extent each of these nonlegal forces helps or hinders the law at work on the problems. Legal efforts to tax and spend, regulate, or penalize to reduce a problem are likely to be relatively inefficient if people generally (1) perceive the problem to be no immediate threat to themselves or others, (2) are uncritical of aggravations of the problem, and (3) find it economical to disregard the problem.

## DETAILED DESCRIPTION OF STRATEGIES

—some people combat pollution because they are concerned with a threat to the welfare of all humanity

—some people drive safely because they do not wish to be thought of as reckless or irresponsible

—some oil companies reduce pollutants in their gasoline because by doing so today they can sell more gasoline

(c) Consider in class discussion (1) whether nonlegal forces can effectively treat such problems as highway safety and pollution without the help of the legal technique and without the support of these nonlegal forces and (2) whether legal *and* nonlegal forces can completely "solve" problems like highway safety and pollution.

(d) Have students debate this issue: If everyone would observe the Golden Rule, automobile accidents would be no problem. (Of course, there must be adequate preparation for the debate including, needless to say, the students knowing what the "Golden Rule" is! The Hebrew variant, proposed by Rabbi Hillel reads: "What is hateful to yourself, do not to your fellow man. That is the whole of the Torah, and the rest is but commentary...Go, and learn it.")

## DISCUSSION OF STRATEGIES AND RESOURCES

# MODULE III: LEGAL PROCESSES — HOW THE LAW PLAYS THE GAME ALSO COUNTS*

1. *The Main Focus.*

The law seeks to do many different jobs in society. As we have seen in Module I, law helps to guide and c
law helps to settle disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law

As we have also seen in Module II, law does its job with particular resources, what we have called legal t
benefit distribution technique, the regulation technique, the penal technique, the private remedy technique, and the
technique. All these legal techniques might be used on some social problems. Thus, Module II examined all five le
work on problems of highway safety and pollution. Module II also considered that for the law to be effective, the a
resources must be used. Finally, we discussed the influence of nonlegal forces at work on social problems.

The assignment of the right legal technique to a social problem is important, but so is the process by wh
processes for using our legal resources should be well designed, and officials should follow them. As officials use
solve problems, citizens should be concerned about the fairness of the processes involved, and whether officials act
processes.

In the first understanding of Module I, students were introduced to legal processes for dispute settling—
of the private remedy technique. The processes for any of the legal techniques can be analyzed. These processes c
or badly. In this module, students will analyze in detail some basic processes of the penal technique of law. They
tions of why maintenance of sound processes of the penal technique is important, the citizen's role in securing fai
cesses, and some possible social costs involved in maintaining a legal system that is concerned with the fairness o

2. *Why This Focus?*

Three understandings about legal processes of the penal technique will be considered through illustration
field of law known to lawyers as criminal procedure. The law of criminal procedure consists of rules specifying *ho*
must be enforced or carried out. These provide ground rules for legal officials (legislators, police, prosecutors,
criminal cases where a private citizen is charged by the government with violating a criminal statute, that is, com

Illustrations could be drawn from the other legal techniques. However, there are several reasons for dra
penal technique. First, when a citizen is apprehended and prosecuted pursuant to this legal technique, a great dea
for the accused (liberty) and society (order). This, along with students' relative familiarity with criminal law,
student interest in the subject matter. Secondly, our society has had long experience with attempts to design and
cesses for use of this legal technique; such was a primary concern of our forefathers in drafting the Bill of Right
value of some of the processes in the penal technique is currently being debated and will continue to be in the com
over crime grows.

A caution may be appropriate at this point. This unit considers the value of good legal processes. It l
processes for examples. To point out that good processes are important is not to say that in practice good process
lowed. On the contrary, the legal system's failure to pursue fair and sound processes is probably more often a sou
than legal rules which are unjust.

One helpful method for teaching the importance of having and following good legal processes is that of p
fects in the design or application of our penal law processes, either in society at large or in the school communit
that may be profitably used throughout this module.

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*See footnote on page 1, Module 1.

# MODULE III: LEGAL PROCESSES — HOW THE LAW PLAYS THE GAME ALSO COUNTS *

seeks to do many different jobs in society. As we have seen in Module I, law helps to guide and coordinate activities, e disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law may try to do.

ave also seen in Module II, law does its job with particular resources, what we have called legal techniques; the on technique, the regulation technique, the penal technique, the private remedy technique, and the private arrangement hese legal techniques might be used on some social problems. Thus, Module II examined all five legal techniques at of highway safety and pollution. Module II also considered that for the law to be effective, the appropriate legal used. Finally, we discussed the influence of nonlegal forces at work on social problems.

ignment of the right legal technique to a social problem is important, but so is the process by which it is used. The ng our legal resources should be well designed, and officials should follow them. As officials use legal techniques to itizens should be concerned about the fairness of the processes involved, and whether officials actually follow these

first understanding of Module I, students were introduced to legal processes for dispute settling—the legal processes nedy technique. The processes for any of the legal techniques can be analyzed. These processes can be designed well module, students will analyze in detail some basic processes of the penal technique of law. They will focus on ques- tenance of sound processes of the penal technique is important, the citizen's role in securing fair criminal law pro- possible social costs involved in maintaining a legal system that is concerned with the fairness of *how* law operates.

*s?*

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on may be appropriate at this point. This unit considers the value of good legal processes. It looks to criminal law mples. To point out that good processes are important is not to say that in practice good processes are always fol- ntrary, the legal system's failure to pursue fair and sound processes is probably more often a source of injustice which are unjust.

pful method for teaching the importance of having and following good legal processes is that of pointing out actual de- gn or application of our penal law processes, either in society at large or in the school community. This is a method tably used throughout this module.

page 1, Module 1.

3. *Outline of the Teaching Scheme.*

This module attempts to have students reach three main understandings by evaluating processes of one legal
penal technique). First, legal processes can and should be evaluated in terms of two things: the extent to which
outcomes *and* the extent to which they are a fair way of going about things. Second, the task of securing good proc
designing good processes in the first place and protecting them from disregard by officials. Third, the value of g
conflict with other values so that good processes can be maintained only at some social cost, costs we may have to
price of having good processes.

NOTE: *An Alternative Sequence.*

This module on evaluating processes of the criminal law begins with presentation of cases and stories whi
evaluate not only legal outcomes, but also legal processes. An alternative way that the module might be introduced
on a survey of the process rights (the rights of the accused) that are set forth in the Bill of Rights of the Unit
tion. As the module is presently structured, these constitutional rights are surveyed in the first part of Understa
son for not introducing the unit with the Bill of Rights is this: by examining and evaluating certain basic proces
law *before* noting their constitutional status, it is usually easier to get students to consider *why* certain crimina
important. This approach avoids possible circular reasoning—our basic rights are important because they are in th
vice versa. However, the teacher may feel that the best way to introduce criminal processes is to survey their emb
of Rights, and, if this is the case, the initial materials from Understanding II on the Bill of Rights are an obviou
The teacher might then return to Understanding I to examine and evaluate several of the selected processes by usin

*hing Scheme.*

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t, legal processes can and should be evaluated in terms of two things: the extent to which they produce desired
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rocesses.

*Sequence.*

on evaluating processes of the criminal law begins with presentation of cases and stories which lead students to
outcomes, but also legal processes. An alternative way that the module might be introduced is to focus first
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is the case, the initial materials from Understanding II on the Bill of Rights are an obvious place to start.
return to Understanding I to examine and evaluate several of the selected processes by using cases and stories.

Module 3

## SUMMARY OF UNDERSTANDINGS

I. SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

- THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- THEIR VALUE AS SOUND PROCESSES

II. SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE PROCESSES WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL CONFORM TO SOUND PROCESSES.

III. MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

### UNDERSTANDING I

SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW O IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUA TERMS OF:

- THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- THEIR VALUE AS SOUND PROCESSES

### A. *Explanation of Understanding I*

Laws are necessary instruments to perform various social functions. Thus, we ha free education, laws calling for licensing drivers, laws punishing rape, etc. But none self-executing or self-applying. There must be further rules for determining *how*, for e rape will be implemented, *how* suspected rapists may be detected, apprehended, questioned punished. When we evaluate the operation of law we usually focus only on legal outcome

## SUMMARY OF UNDERSTANDINGS

I. SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

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THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
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### *ion of Understanding I*

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Module 3

QUESTIONS TO REACH UNDERSTANDING

- How can the basic legal processes enumerated below be evaluated with respect to th of producing just results?
- How are the illustrative basic processes below subject to qualitative evaluation i fairness regardless of the results they produce?
- How can the basic legal processes enumerated below be judged as far as fairness i without considering the results they may produce?

USE OF VISUALS

- Using a picture of an individual being interogated by the law, students may develo of what will probably happen as a result of the events portrayed in this picture. actions so projected may then be analyzed with respect to fairness to the accused.
- Show a film or filmstrip portraying the apprehension of an alleged lawbreaker wit track turned off, or without the script in the case of a filmstrip. From the exp actions of the accused, students may make statements concerning the opinion of the regarding the fairness of the process applied. The statements may then be tested of judgment by rerunning the film using audio or printed script.

REACH UNDERSTANDING

n the basic legal processes enumerated below be evaluated with respect to the likelihood
ducing just results?

e the illustrative basic processes below subject to qualitative evaluation in terms of
ss regardless of the results they produce?

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ALS

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ing the fairness of the process applied. The statements may then be tested for accuracy
gment by rerunning the film using audio or printed script.

### DETAILED DESCRIPTION OF STRATEGIES

1. Should our processes give people a chance to know in advance what acts will be punished as crimes?

a) Discuss with class the enumerated court cases on page 100. Consider the question of whether the processes followed were fair. For example, did the process allow for the people involved to be aware in advance of what acts would be punished as crime? Were the outcomes just? Were the people involved subjected to inhumane practices?

b) Divide the class into three groups. Each group should appoint a group leader to conduct group discussion and report back to the class on the following question: Is the individual in the case guilty, considering the fact he was notified in advance that a particular act was considered a crime?

Pupils should then regroup and try to construct their own case and report to the class their results. The case should prove interesting because some of the pupils will undoubtedly draw on their own personal experience.

c) View a film such as "Due Process of Law Denied" (see page 101) depicting disregard of fair process by legal officials; direct student discussion of the film not only to the "rights" considered in the film, but also in identifying what unfair legal processes the film pointed out.

### DISCUSSION OF STRATEGIES AND RESOU

The procedures and resources of se
four basic processes of the crimin
concern (1) making prohibitions
(2) allowing suspects to remain si
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Evaluation of legal processes shou
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## RIPTION OF STRATEGIES

## DISCUSSION OF STRATEGIES AND RESOURCES

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The procedures and resources of section B examine four basic processes of the criminal law. These concern (1) making prohibitions known in advance, (2) allowing suspects to remain silent, (3) assuring that the disposition of a case will be by an impartial tribunal, and (4) allowing a suspect a chance to speak in his own favor.

Evaluation of legal processes should generally be on two grounds: the suitability of the process for securing desirable outcomes *and* the inherent fairness of the process. The main desirable outcome in applying criminal laws is convicting the guilty and not the innocent. Understanding I should reveal that the processes followed in applying the law may increase the likelihood of reaching that outcome. This process value should be familiar. A second is perhaps more neglected. A process itself, regardless of the outcome it produces, may be fair or unfair, just or unjust. Even if one who confesses under pressure of a thumb screw, is in fact guilty, something is unfair about using this process of investigation. It is wrong because the next suspect who confesses might be innocent; it is wrong because torture is itself inhumane and unfair.

With each of the four legal processes, cases and hypothetical stories are presented that show some abuses. By presenting the process from the negative point of view, students may realize the value of a good process by criticizing a bad process and identifying what is wrong with it. The value of the

particular process can be further cla
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showing abuse of the process values.
or stories may lend themselves to dra
tion as skits and role-plays.

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particular process can be further clarified if students are called on to construct further episodes showing abuse of the process values. Such episodes or stories may lend themselves to dramatic presentation as skits and role-plays.

The value of giving people a chance in advance to know what is prohibited can be demonstrated in two ways. First, in protection of the innocent from the wrong outcome, this process serves to assure that lawmakers cannot strike at an unpopular citizen by defining an act he has already committed as a crime. With similar reasoning, courts have struck down certain laws that prohibit "vagrancy" or "loitering" in vague or indefinite terms because the laws do not make clear in advance what action is prohibited. Second, the simplest reason for giving advance notice is that fairness demands it. There is something unfair about surprising a person and punishing him for an act that he had no way of knowing was punishable. This is true, at least, when the act in question involves breaking a regulation (sliding into base, failing to cover a bock) as opposed to purposefully hurting someone else. In the latter case, morality should tell the actor that his act is wrong, and he isn't taken by surprise.

One point might be clarified to avoid confusion in dealing with the process of giving advance notice. The important thing we are talking about here is a process that makes sure the accused person has had a *chance to know* in advance that what he has done was a crime. This is not the same as saying the accused person must know his act is against the law; he just must have a *chance* to know this. It is often said

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RES

that "ignorance of the law is no generally it isn't. If a driver miles over the limit, it is not failed to see the speed limit si did not know the law. But this from the case where there are no giving the driver a chance to kn in advance.

### 2. Should our legal process permit a person to remain silent?

a) Discuss with class the court cases on pages 101-102. In the student's opinion, did he feel that the methods used by law enforcement officers was fair? Should the alleged guilty party have a right to remain silent and not make any comments about the deed of which he is accused?

b) Place on an overhead transparency or on the board the hypothetical cases on page 102 assigning different groups of students to each case. Have the students consider one of the cases by placing their individual ideas on their own sheet of paper of whether the procedures in each case were fair. Then working with a team partner, each pupil should try to reconstruct the case so that, in the opinion of that team, the proceeding would have been just. Call on some of the pupils to describe their reconstructed stories. It might be interesting to see if some might leave the story exactly the same.

The value of allowing suspects t also be demonstrated in terms of If silence is not respected and use the "third degree," a suspec incriminating evidence in order police. This will increase the innocent will be convicted. The or unfairness of a process of in the third degree is the other g evaluation. There is something about forcing a person to give himself that will in turn be use person his life, liberty, or pro most effective way to make this whether it is fair or right to in a case where the only eviden evidence that was starved or bea normal procedure that courts fo has been gathered through impro prohibit the use of such eviden exclusion of evidence is consid in Understanding II on page 25 that "ignorance of the law is no defense," and generally it isn't. If a driver is speeding 10 miles over the limit, it is not a defense that he failed to see the speed limit signs and therefore did not know the law. But this is quite different from the case where there are no speed limit signs giving the driver a chance to know the speed limit in advance.

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The value of allowing suspects to say nothing can also be demonstrated in terms of process and outcome. If silence is not respected and police are free to use the "third degree," a suspect may give inaccurate, incriminating evidence in order to escape the police. This will increase the likelihood that the innocent will be convicted. The inherent fairness or unfairness of a process of investigation involving the third degree is the other ground for process evaluation. There is something fundamentally unfair about forcing a person to give information about himself that will in turn be used to take from this person his life, liberty, or property. Perhaps the most effective way to make this point is to ask whether it is fair or right to convict the suspect in a case where the only evidence against him is evidence that was starved or beaten out of him. The normal procedure that courts follow when evidence has been gathered through improper processes is to prohibit the use of such evidence in court. This exclusion of evidence is considered in some detail in Understanding II on page 25 in this manual.

Module 3

## DETAILED DESCRIPTION OF STRATEGIES

c) Have a local policeman speak to the class about the right to remain silent and the processes the police must go through to make suspects aware of that right. Have a question-answer session after the talk. (The impact of the *Miranda* case. See below and page 103.)

d) Assign pupils to do preliminary research to a debate on this topic: Should an individual have a right to remain silent if questioned by the local police, district attorney's office, representatives of the American Civil Liberties Union?

e) Appoint certain pupils in class to research the *Miranda* vs. *Arizona* case. Then have them role-play the "before" and "after" court decision scenes in the interrogation. The film, *Right to Remain Silent: The Miranda Case*, Encyclopedia Britannica's Living Bill of Rights series, can be used here. See page 199

f) Have the entire class do a study on the various interpretations of rights guaranteed an individual under the Bill of Rights. Then have some of the pupils debate the topic: A person is definitely guilty if he pleads the fifth amendment.

## DISCUSSION OF STRATEGIES AND RESOURC

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of investigation. In the now famous
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## DISCUSSION OF STRATEGIES AND RESOURCES

The Supreme Court has expanded the right to remain silent in the interest of securing fairer processes of investigation. In the now famous case of *Miranda* vs. *Arizona*, 384 *U.S. Reports* 436 (1966), the court declared two restrictions on the questioning of suspects. Any evidence forced from a suspect is not good in court; any evidence from the suspect is not good unless he has first been warned of his rights to stay silent and his right to have a lawyers help in answering police questioning. Recently the Supreme Court limited or clarified the rule in *Miranda* by saying in the case of *Harris* vs. *New York*, vol. 400 *U.S. Reports*, (1971) that if a suspect gives self-incriminating evidence before being warned of his rights and then at his trial takes the witness stand with a different story, the self-incriminating evidence can be shown to the jury in order to show that the suspect might be a liar. The logic and good sense of either the *Miranda* or the *Harris* case might provide the basis of an interesting classroom debate.

3. Should our processes of trial provide for an impartial judge and jury free of undue influence?

a) Distribute to pupils the details of the *Moore* vs. *Dempsey* case as given on resource page 103. Throw open for discussion the question: Can this trial be conducted fairly under these circumstances? (Pupils should have some background in the civil rights in the Southern states.) As an allied topic to above question, you could discuss with the class why it seems to be so difficult to select a jury for a trial involving the Black Panthers, the Weathermen, or any controversial organization cases.

b) Divide your class in half. One half of the group should consider the two hypothetical cases on page 105 and decide if, in their opinion, an impartial decision was arrived at. Have the other group devise incidents of a similar nature; i.e., a partial third party making a decision about the guilt or innocence of some individual.

c) Have pupils view the film, "To Kill a Mockingbird," and then discuss the unfair processes that it illustrates. One or more of the pupils may wish to read Harper Lee's novel (same title) and give a report to class. This should

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In evaluating a process providing for trial by an *impartial* tribunal, protecting the innocent from erroneous outcome and inherent fairness of the process itself are again relevant. An impartial judge and jury are free of outside influences that have no place in reaching a decision based on the merits of a case. Examples of such improper influences that might impair the impartiality of a trial are racial prejudice, personal dislike, political pressure, or financial interest in the outcome.

Obviously, if the judge or jury is not impartial, the outcome of the case may be erroneous—that is, may fail to accord with relevant law and actual fact. But, in addition to this, there is something inherently unfair about convicting a man in a court that is not impartial. Again, the most effective way to make this point may be to consider whether, even is a suspect is guilty, we would still say something is wrong if he is convicted in a court that would find him guilty anyway.

also generate discussion on unfair legal processes.

d) To point out the legal processes at work in the course of history, assign pupils in class to do reports on the following famous trials in history:
—Eugene Debs
—Sacco and Vanzetti
—John Brown
—Black Panthers
—SDS

4. Should our processes be ones that allow the suspect a chance to defend himself before he is punished?

a) Read the hypothetical cases: "The Case of the Expelled Student," "Dudley Gets Some New Duds," or the case "In Re Gault" on pages 103 and 106. WWithout giving pupils any clues, see if they can judge the soundness of the legal processes that were utilized in each case.

b) Have pupils put their imagination to work and devise some stories that would depict individuals being punished for crimes without having any chance to present their side of the story. They could then make a bulletin board display which includes all the stories they have plus illustrated cartoons titled "Legal Processes Gone Astray."

c) Have class view a film or filmstrip which depicts disregard of fair legal processes. See page 107.

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DISCUSSION OF STRATEGIES AND RESOURCES

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The final examples involve letting the suspect have a chance to defend himself before he is punished. No matter how much evidence there seems to be against a suspect there is always a chance that, when given a chance to confront his accusers, he can supply an explanation or defense. To convict without allowing the person most concerned a chance to speak increases the likelihood of an erroneous conviction. A second criterion for evaluating processes is important here, too. To punish a suspect without first offering him a chance to be heard or have his say in the court is inherently unfair. To make this point, the teacher might consider a hypothetical case in which a suspect is convicted who is in fact guilty, but without telling him about the trial until after he has been convicted.

## RESOURCES*

### Sample Court Cases

State vs. Masino, vol. 38 Southern Reporter, second series, p. 685 (1949).

Masino convicted of negligent homicide for his careless construction of a h project that resulted in loss of lives; the carelessness occurred before th making negligent homicide a crime was passed.

People vs. Diaz, vol. 4 New York Reports, second series, p. 469 (1958).

Diaz was convicted of loitering under a statute that prohibits loitering wi that term any further. Since no one could tell in advance what exactly suc criminal statute was prohibiting, the appeals court reversed the convictio

### Sample Hypothetical Cases

Case #1 -- Throw the Book at Him

At a teachers' meeting the junior high teachers make a new school rule: "A fails to have covers on his or her textbooks will have to stay after school hour recess for three days." It so happens the teachers didn't bother to t body about the new rule. One day a few weeks later a teacher, Mr. Chamberl having trouble with discipline in a class. He suddenly decides to hold a t check and instructed six eighth graders whose books were not covered to re school. They did so and learned for the first time of the new school rule which they had broken.

Case #2 -- Some Way to Win a Ballgame

Your school and another softball team are in the State junior high softbal ship game. In a semi-final game, a boy broke his leg sliding into second Because of this, before the final game, the umpires made a new rule: "Any slides is out." But they forgot to tell either team.

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*Direct quotations from statutes are indicated by the use of quotation marks. Oth are summaries or paraphrases of the statute listed.

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## Hypothetical Cases

### 1 -- Throw the Book at Him

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With two outs in the last inning, your school is behind by one run. One of yo boys "belts a long one" and tries to make a homerun out of it. It is a close at the plate and the runner slides. The umpire cries, "You slid, therefore yo out." The umpire explains the new rule to the teams as everybody is leaving t ballpark.

### Case #3 -- The Young Drinker

Today in New York the minimum drinking age is 18. Although we sometimes hear say that drinking under 18 is illegal, under the New York law, it is the selling or giving the underage person the alcohol that is a crime. It isn't crime for the minor who does the actual drinking. But suppose there is a chan in the law. Suppose the New York Legislature makes it a crime if you drink be you are 18, with a 5-year punishment. The law has not yet been publicized in papers.

Bud Schaefer, a 14-year old, drinks a beer at the local tavern and is convicte under the new, unpublished law.

"Due Process of Law Denied." 29 min. McGraw-Hill.

Adapted from the 20th Century Fox feature film, "Ox Bow Incident." A dramatiza of the kind of unlawful trials which were sometimes held in the early days of West (Nevada 1885). Pictures the dangers of denying due process of law and illustrates convincingly the necessity to recognize the rights of an accused person as guaranteed by the Constitution of the U.S. The action and dialogue the film point up the dangers of mob violence.

Sample Court Cases (to be used with strategy 2a)

People vs. Jones, vol. 150 Pacific Reporter, second series, p. 801 (1944).

Jones was convicted of murder. His conviction was based on a confession he ma police. Jones was beaten twice a day for 4 days by police. On the fourth day he confessed.

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*Watts vs. Indiana*, vol. 338 *United States Reports*, p. 49 (1949).

Watts was convicted of murder. His conviction was based on a confession he made after he was kept in solitary confinement for a week and questioned intensively at all hours of the day and night.

## Sample Hypothetical Cases (to be used with strategy 2b)

### Case #1 -- Friendly Persuasion

Wilma is a cheerleader. She has been accused of smoking in the girls' room. The principal says that unless she explains, she is through cheerleading. Wilma then confesses. This confession is the only evidence against her. Wilma, who now pleads innocent, is convicted by the school judiciary of breaking the school smoking rules, and is expelled.

### Case #2 -- Speak Up, Son

Mrs. Justice, an eighth grade teacher, gives a true-false test to her eighth grade social studies class. Janie Bookmark usually gets the highest grades in class. Oliver Averager is a "C" student. On this particular test Oliver and Janie tie for the highest grade. However, they sit beside each other and their answers match exactly. Mrs. Justice accuses Oliver of copying Janie's answers. Oliver refuses to answer. Mrs. Justice presents Oliver with a Bible and says, "Swear on this that you will tell me the truth; I am going to ask you if you have been cheating." Oliver again says nothing. Mrs. Justice says, "Since you are afraid to swear that you did not cheat, you must have cheated. Therefore, I'm giving you a zero on the test."

Excerpts from the Miranda case, all within junior high school reading level, are c in Quigley and Longaker, *Conflict, Politics and Freedom,* pp. 90-93; Bassiouni e *Crimes and Justice*, pp. 48-51; as well as the Oregon State Bar Association refere listed below.

Although the case In Re Gault (1967) was concerned with other questions also, the of self-incrimination and right to counsel were points specified in the Supreme C decision. Since the case involves a juvenile, students may find greater relevanc in cases concerning adults; it can certainly be used for comparisons and reinforc These excerpts are all within junior high reading level: Bragdon and Pittenger, *Pursuit of Justice*, pp. 71-77, and 166-167; Bassiouni and Shiel, *Youth and the La* pp. 72-78; Cuban and Arronson, *You've Been Arrested,* pp. 45-47; Oregon State Bar *The Privilege Against Self-Incrimination,* (which has both the Miranda and the Gau as well as some others). Also useful: segments of Oliver and Newman, *Rights of* *Judgment,* Case Study No. 12.

The film, *Young Person and the Court,* could be used for analysis with this materi (See AV listing.)

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* U Chapter Four, Lesson 10 - "Process values -- how our law does its job, also cou and Company.

Sample Court Case (to be used with strategy 3a)

Moore vs. Dempsey, vol. 261 United States Reports, p. 86 (1923).

"...The appellants are five negroes who were convicted of murder in the first and sentenced to death by the Court of the State of Arkansas. The ground of pts from the Miranda case, all within junior high school reading level, are contained Quigley and Longaker, *Conflict, Politics and Freedom,* pp. 90-93; Bassiouni et al, *s and Justice,* pp. 48-51; as well as the Oregon State Bar Association reference d below.

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rs, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Unit IV, pter Four, Lesson 10 - "Process values -- how our law does its job, also counts." Ginn Company.

e Court Case (to be used with strategy 3a)

e vs. Dempsey, vol. 261 United States Reports, p. 86 (1923).

..The appellants are five negroes who were convicted of murder in the first degree d sentenced to death by the Court of the State of Arkansas. The ground of the

petition for the writ is that the proceedings in the State Court,...were only
and that the appellants were hurried to conviction under the pressure of a mob
out any regard for their rights and without according to them due process of l

"...while we put (the case) in narrative form, we are not affirming the facts
as stated but only what we must take them to be,... . On the night of Septemb
1919, a number of colored people assembled in their church were attacked and f
upon by a body of white men, and in the disturbance that followed a white man
killed. The report of the killing caused great excitement and was followed by
hunting down and shooting of many negroes and also by the killing on October 1
one Clinton Lee, a white man, for whose murder the petitioners were indicted.
(the Negroes) say that their meeting was to employ counsel for protection agai
extortions practiced upon them by the landowners and that the landowners tried
prevent their effort,... .

"...Shortly after the arrest of the petitioners a mob marched to the jail for
purpose of lynching them but were prevented by the presence of United States
and the promise of some of the Committee of Seven (a committee appointed by th
governor) and other leading officials that if the mob would refrain, as the pe
puts it, they would execute those found guilty in the form of law. ... Acco
to affidavits of two white men and the colored witnesses on whose testimony th
petitioners were convicted,...the Committee made good their promise by calling
colored witnesses and having them whipped and tortured until they would say wh
was wanted,... . On November 3 the petitioners were brought into Court, infor
that a certain lawyer was appointed their counsel and were placed on trial be
a white jury... . The Court and neighborhood were thronged with an adverse c
that threatened the most dangerous consequences to anyone interfering with th
desired result. The counsel...had had no preliminary consultation with the a
called no witnesses for the defence although they could have been produced, a
not put the defendants on the stand. The trial lasted about three-quarters o
hour and in less than five minutes the jury brought in a verdict of guilty of
in the first degree. ...

"...appeals to the Governor, about a year later, earnestly urg(es) him not to
fere with the execution of the petitioners. ...(One) stated that 'all our ci
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..while we put (the case) in narrative form, we are not affirming the facts to be stated but only what we must take them to be,... . On the night of September 30, 19, a number of colored people assembled in their church were attacked and fired on by a body of white men, and in the disturbance that followed a white man was lled. The report of the killing caused great excitement and was followed by the nting down and shooting of many negroes and also by the killing on October 1 of e Clinton Lee, a white man, for whose murder the petitioners were indicted. ...They he Negroes) say that their meeting was to employ counsel for protection against tortions practiced upon them by the landowners and that the landowners tried to event their effort,... .

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..appeals to the Governor, about a year later, earnestly urg(es) him not to inter- re with the execution of the petitioners. ...(One) stated that 'all our citizens re of the opinion that the law should take its course.' Another from a (community

veterans group) protests against a contemplated commutation of the sentence o
of the petitioners and repeats that a 'solemn promise was given by the leadin
of the community that if the guilty parties were not lynched, and let the law
course, that justice would be done and the majesty of the law upheld.' ...

"...it does not seem to us sufficient to allow a Judge of the United States t
the duty of examining the facts for himself when if true as alleged they make
absolutely void. ...it appears to us unavoidable that the District Judge sho
whether the facts alleged are true and whether they can be explained so far a
the state proceedings undisturbed.

*"Order reversed. The case to stand for hearing before the District Court."*

Sample Hypothetical Cases (to be used with strategy 3b)

Case #1 -- Now It's My Turn

Mary and Liz are arch rivals at the junior high school. They compete over al
everything--boys, grades, sports, etc. Recently Mary was elected captain of
cheerleaders and student body secretary, defeating Liz. Liz's boyfriend has
waiting for Mary after class. Mary just made the honor roll and Liz did not.

Liz is the chief judge on the local youth court. Mary has been accused of sh
lifting, but says there must be some mistake. Liz is the judge at Mary's tri
Mary is found guilty.

Case #2 -- Will He Call 'em Like He Sees 'em?

Returning to the championship junior high school softball game, suppose the s
studies department chairman at each school was sure his school's team would w
Each was so sure they bet 1 year's salary on the outcome of the game. It s
that the social studies chairman from your school is also the umpire for this
Your school wins.

"To Kill A Mockingbird" (Harper Lee). 129 min. (In AV Section of Bibliography

Gregory Peck, Brock Peters, Mary Baham -- Pultizer Prize novel -- tale of Sou
lawyer -- deals with problems of prejudicial justice and its effect on the co

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## Hypothetical Cases (to be used with strategy 3b)

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## Sample Hypothetical Cases (to be used with strategy 4a)

### Case #1 -- The Case of the Expelled Student (From a Report of a Commissioner's H

"On March 17 (___), petitioner's son...was expelled from attendance at (____) H
Petitioner's father was informed of this action by letter dated March 18, (___
which he was given the opportunity to appear before (the Board of Education) c
April 7, (____) with his son and counsel of his choosing. Petitioner seeks a
reinstating him immediately as a student at (____) High School.

"The record indicates that (the student) was expelled (by the principal) befor
any opportunity for a hearing on the charges against him. While it is true t
appeared before (the Board of Education) at its April 7 regular meeting, he w
that time given an opportunity to present witnesses on his behalf or to cross
witnesses against him. ... (At) that meeting the burden was placed on (the s
to prove his innocence of the charges against him, rather than upon (the Boar
his guilt.

"It further appears from the Board's papers that the sole reason (for expellin
student) was that (the Board) was informed that (the student) had committed c
acts. There is no indication that any evidence was presented substantiating
information.

"The Commissioner's ruling supported the student. He noted that the petitione
not provided with those 'proper safeguards of procedural fairness.' He order
the student be reinstated for the following school year."

### Case #2 -- Dudley Gets Some New Duds

There have been a series of thefts from the boys' locker room at the junior
One day 10 lockers are broken into, and several hundred dollars worth of cash
are taken. The following day Dudley Dapperman, who usually wears grubby jean
shows up in new bells, a double-breasted blazer, a new bodyshirt, and a new
almost never goes near the men's gym, but that one day one of his books is fo
men's locker room. Also, a janitor reports to the coach that he saw Dudley s
back of the gym about 4:00 p.m. the day of the theft.

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Module 3

The coach brings all this information to the attention of the principal, and the to tell Dudley that he is expelled from school. When Dudley is told this, he obj saying he was on the other side of town when the thefts occurred. The principal "Come now, Dudley, we have already discussed the evidence in your case and you

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Uni Chapter One, Lessons 3 and 4 - "Process values -- how our law does its job, also Ginn and Company.

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Module 3

UNDERSTANDING II

SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT
PROCESSES WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSU
OFFICIALS WILL CONFORM TO SOUND PROCESSES.

## A. *Explanation of Understanding II*

Rules that provide good processes are not self-enforcing. Well-designed processe
enhance the likelihood of a desirable result and which are inherently fair ways of applyin
disregarded by officials. Merely having a rule saying that suspects have a right to silen
gation and trial process does not assure that an occasional policeman will not coerce inf
citizen.

Thus, a legal system that strives for fairness will need to provide some ways of
officials to insure they actually follow prescribed processes. Understanding II focuses o
surveillance of officials and describes some of the reasons for these checks: (1) Checks
discourage officials from disregarding prescribed processes, (2) checks can undo injustice
have disregarded prescribed processes, and (3) checks can provide for redress against offi
caused injustice by ignoring prescribed processes. The checks to be considered here are: (
processes constitutional status, (2) providing the accused with the help of a lawyer, (3)
the disregard of certain processes, (4) allowing private lawsuits against officials who ha
processes, (5) prohibiting the use of evidence gathered while disregarding a prescribed pr
ing for review of official decisions by higher officials, and (7) establishing civilian bo
officials to hear complaints about how officials are doing their jobs.

In practice, some of these checks are not very effective. As a result, some injus
in the operation of our legal system results not from ill-designed processes, but from off
for good processes.

## B. *Teaching Understanding II*

OBJECTIVES

- Given statements made by the accused concerning unlawful action of enforcement pe
  incident of rule infraction or lawbreaking, the student can suggest ways in which
  officer may be checked so that unfair actions will not result.

II

RELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE LEGAL S WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT S WILL CONFORM TO SOUND PROCESSES.

*f Understanding II*

hat provide good processes are not self-enforcing. Well-designed processes—those which lihood of a desirable result and which are inherently fair ways of applying the law—may be fficials. Merely having a rule saying that suspects have a right to silence in the investi- process does not assure that an occasional policeman will not coerce information from a

legal system that strives for fairness will need to provide some ways of checking on ure they actually follow prescribed processes. Understanding II focuses on the need for officials and describes some of the reasons for these checks: (1) Checks may operate to ials from disregarding prescribed processes, (2) checks can undo injustices when officials prescribed processes, and (3) checks can provide for redress against officials who have by ignoring prescribed processes. The checks to be considered here are: (1) giving certain tutional status, (2) providing the accused with the help of a lawyer, (3) making a crime certain processes, (4) allowing private lawsuits against officials who have disregarded rohibiting the use of evidence gathered while disregarding a prescribed process; (6) provid- f official decisions by higher officials, and (7) establishing civilian boards or other r complaints about how officials are doing their jobs.

tice, some of these checks are not very effective. As a result, some injustice that occurs of our legal system results not from ill-designed processes, but from official disregard es.

*erstanding II*

tatements made by the accused concerning unlawful action of enforcement personnel in an t of rule infraction or lawbreaking, the student can suggest ways in which the enforcement may be checked so that unfair actions will not result.

Module 3

- Given a list of types of checks upon the application of legal processes by offic
  can cite examples of instances when each can be applied, and can categorize each
  in terms of acceptance by the public.

## QUESTIONS TO REACH UNDERSTANDING

- How does the Constitution serve the purpose of protecting basic fair processes?
- Why do officials sometimes disregard basic processes?
- What important roles must private citizens play in the process of checking on of
  to basic fair processes in the application of criminal laws?

## USE OF VISUALS

- Students experienced in photography can provide pictures for class discussion.
  staged portraying detection by authorities of an alleged student infraction of r
  actions of the authorities in the pictures may then be analyzed concerning motiv
  garding basic processes and possible actions of students to prevent such disrega
  processes.
- Students may analyze the cartoon on page 120, both in terms of the layman's view
  policeman's view of the scene portrayed by it.

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EACH UNDERSTANDING

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n's view of the scene portrayed by it.

DETAILED DESCRIPTION OF STRATEGIES

## 1. Constitutional status given to certain basic processes of criminal law enforcement.

a) Assign pupils the task of looking up Amendments IV, V, VI, and VIII in the Bill of Rights of the United States Constitution. They should be able to identify specifically the basic legal processes guaranteed by these amendments to guarantee that ultimately only the guilty will be punished, and that criminal justice will prevail.

b) Have pupils view a film or filmstrip that depicts how the rights of the accused are protected. In discussion after film, teacher should try to get pupils to point out what constitutional processes were afforded the accused.

c) Because of the alarming increase in crime rate, the public has demanded passage of laws or measures to combat this "mushrooming of crime." Great controversy has been generated about the fairness, constitutionality, and "ability to convict" of these new measures. Discuss with class the following measures and ask them to evaluate them in light of the above comments:

—"No knock" procedures
—Preventive detention
—Stop and frisk
—Unlimited wiretaps
—Mass arrests

DISCUSSION OF STRATEGIES AND RESO

Understanding I tries to teach th
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In the area of the criminal law, t
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## DISCUSSION OF STRATEGIES AND RESOURCES

Understanding I tries to teach the importance of having good processes by which law operates, processes that are themselves reasonable and fair ways of doing things as well as means likely to achieve the desired outcome. Because some of the processes of our legal system in fact are ill-designed (overcrowded courts, poorly managed correctional institutions), some people simply look on legal process in general with contempt: process means "technicality," and technicalities interfere with justice. Many of the deficiencies in American legal justice stem not from unfair laws, but from defective processes—defective ways of applying laws. What is needed is not contempt for process, but a constructive attitude towards the importance of creating and maintaining sound processes.

Understanding II focuses on the point that having good legal processes available and following them are not always the same thing. Thus, to have a just legal system, we need a system that watches over its processes, a system that provides checks on official conformity to good processes.

In the area of the criminal law, the first way that the system provides for protection of processes is to provide these processes with special constitutional status. Amendments IV, V, VI, and VIII of the Bill of Rights set forth numerous processes that governments must follow in applying criminal laws. Because the language in which these amendments present the "process rights" of the accused is somewhat technical, a paraphrased list of process rights

DETAILED DESCRIPTION OF STRATEGIES

d) Have pupils read a hypothetical case which deals with the issues involved in arrest, trial, appeal, and constitutional law. References on page 117 list several such cases. Questions in case study can promote much fruit for discussion on certain constitutional processes.

DISCUSSION OF STRATEGIES AND RESOUR

is suggested. These provisions may
ful if students evaluate them in te
(1) increasing the likelihood of de
and (2) applying law in a way that
These criteria might also be used t
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ventive detention, and unlimited wi
on these topics can be found in *The*
*to Periodical Literature.*

2. Why officials sometimes disregard prescribed processes for carrying out laws.

a) Work with pupils to recall some cases or stories taken up already in this module to see which of the following reasons most accurately explains why officials disregarded a good process. Some possible answers might be:

- —dishonesty of an official
- —officials being overzealous in trying to do their jobs
- —misjudgment by officials as to what processes are required by law
- —prejudice against any individual because of appearance or background

The second part of Understanding I
officials might disregard prescrib
law. The first thing that comes t
corruption or self-dealing. But m
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demonstrate the diverse reasons ex
ficials may not adhere to good pro
return to examples of bad processe
ing I and ask, "What explains the
processes here?"

3. Checks on the processes that are followed by the police in enforcing the law.

a) Give pupils a short summary of the Ex Parte Sullivan Court decision (p. 117). Ask them to analyze why the processes followed by law enforcement agents in dealing with alleged

The remaining procedures and resou
standing II survey mechanisms by w
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DISCUSSION OF STRATEGIES AND RESOURCES

is suggested. These provisions may be more meaningful if students evaluate them in terms of both (1) increasing the likelihood of desired results, and (2) applying law in a way that is itself fair. These criteria might also be used to evaluate practices such as stop and frisk, "no-knock," preventive detention, and unlimited wiretaps. Material on these topics can be found in *The Readers' Guide to Periodical Literature*.

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The second part of Understanding II considers why officials might disregard prescribed processes of law. The first thing that comes to mind is official corruption or self-dealing. But more often than not, official nonadherence to good processes results from reasons like overzealous attempts to reach a desired outcome, misjudgment as to what the process requires, or inertia (failure to change a process to meet changing needs). The easiest way to demonstrate the diverse reasons explaining why officials may not adhere to good processes may be to return to examples of bad processes in Understanding I and ask, "What explains the disregard of good processes here?"

3. Checks on the processes that are followed by the police in enforcing the law.

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The remaining procedures and resources of Understanding II survey mechanisms by which adherence to prescribed processes for applying criminal law can be checked.

DETAILED DESCRIPTION OF STRATEGIES

violators of the law is important. How important, in their estimation, is the presence of a lawyer to one who has been charged with a crime? It would be interesting to note if some members of the class think they could do better defending themselves without benefit of counsel.

b) Have pupils examine the New York Penal Law and see if they can learn the State law that applies if an official disregards a certain set of official processes.

   —Relate to pupils the actions of the policeman in People ex re Reardon (see page 117). Then let them make a judgment on the policeman's action. Does their judgment coincide with that of the courts.

c) Ask pupils if they think a policeman can be sued if he disregards the rights of a citizen who has been denied his rights in the course of some legal proceedings.

d) Inform pupils of the main facts in the Monroe vs. Pape case explained on page 118. In their opinion, should a suit be allowed by the courts against the the policemen?

e) Make the statement: "Allowing lawsuits against officials who disregard protected processes might not be an effective check on police disregard of protected processes." Divide the class in half. Have one group

DISCUSSION OF STRATEGIES AND RES

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alone is not likely to know what
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of a suspect if his lawyer is th
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public than would the suspect al
suggested, the judge explains how
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arrest and until trial."

The second check on police proce
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A criminal statute setting out s
and a case under this statute is
presentation.

The third possible check on poli
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## DISCUSSION OF STRATEGIES AND RESOURCES

The first check on police adherence to prescribed processes is provision for a suspect to have a lawyer with him once he is picked up. The suspect alone is not likely to know what processes the police must follow to be fair to him. Also, the police are more likely to respect the process rights of a suspect if his lawyer is there. The lawyer is more likely to be listened to by the police or the public than would the suspect alone. In the case suggested, the judge explains how "the time a defendant needs counsel most is immediately after his arrest and until trial."

The second check on police procedure is criminal liability for the police themselves--making it a crime to disregard process rights of the accused. A criminal statute setting out such a crime is cited, and a case under this statute is suggested for class presentation.

The third possible check on police procedure is civil liability. The suspect who has been harmed by officials' disregard for the process rights may sue the officials and claim a right to recover money. The Federal civil rights statute providing for this is cited as is the leading case where the Supreme Court allowed a civil suit against State officials under the Federal statute.

The fourth check on police is probably the most effective and controversial. It is the *exclusionary rule*. This simply means that any information police gather while disregarding a process right of a suspect (e.g., the fruits of an illegal search or forced confession) must be excluded from evidence

### DETAILED DESCRIPTION OF STRATEGIES

give arguments for, the other against, this. Place pupils' opinions on board. Bring out this idea in summing up their opinions:

—The police generally serve as protectors of citizens. Therefore, in a lawsuit against a policeman, the jury may be unlikely to make a policeman pay a person he suspected of a crime, even though the policeman abused that person's rights. Often the people who suffer from disregard of processes are the poor, disadvantaged, or minority members of society—people who do not normally get much public sympathy.

f) Pose this question to the pupils: Does the law seem to protect the guilty more than the innocent? Some lively discussion, should ensue. At end of pupil discussion, tell pupils about Mapp vs. Ohio Supreme Court Case and Decision and the exclusionary rule. Ultimately, does this rule also protect the innocent?

g) Explain to pupils the purpose of civilian review boards. Then have a question-answer session with pupils to express their opinions as to why these boards might be unpopular with police personnel?

h) Have one of the pupils in class do a report on the role of the ombudsman and his relationship to the general public: To whom is he a help or a hindrance?

### DISCUSSION OF STRATEGIES AND RESOURC

in any criminal trial. This check
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rendering key evidence useless in c
is controversial because it sometim
setting free a criminal who the pol
guilty. Some people think this ex
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> seizure in this case) (cannot
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>
> "...To hold otherwise is to gr
> but in reality to withhold its
> and enjoyment... The purpose
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> spect for the constitutional g
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## DISCUSSION OF STRATEGIES AND RESOURCES

in any criminal trial. This check is effective because police do not wish to spoil their cases by rendering key evidence useless in court. This check is controversial because it sometimes results in setting free a criminal who the police know to be guilty. Some people think this exalts a procedural technicality over the social interest in security. Excerpts from the famous case of Mapp vs. Ohio explain the judicial justification for the exclusionary rule. In the words of the Supreme Court:

> "(A)ll evidence obtained...in violation of the Constitution (improper search and seizure in this case) (cannot be used to convict a suspect).
>
> "...To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment... The purpose of the exclusionary rule is to deter—to compel respect for the constitutional guaranty in the only effective available way—by removing the incentive to disregard it... .
>
> "...(This) gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

Civilian review boards and an official ombudsman are relatively new checks on police that have been initiated in some places.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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not always effective. As each check i
students should also consider some of
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## 4. Checks on the trial processes in applying the law.

a) After preliminary research and preparation, have pupils debate this topic: A lawyer should be able to defend a client even though he may sincerely believe his client is guilty. It might be interesting, after the debate, to consider the question of what the trial process would be like if there was no adversary system of justice; i.e., a lawyer for the defense and one for the plaintiff—each pleading their client's position.

b) Discuss with class these questions: Does an accused have the right to skilled counsel to represent him regardless of what his political persuasion might be? Should the news media associate have the right to associate the supposed guilt of the client with the lawyer himself? The article, "The Right to Counsel and the Unpopular Cause," on page 118, does an excellent job in pointing out an individual's right to counsel.

c) As a summary of a study of right to counsel, have pupils view a filmstrip on the right

The final part of Understanding II co
on the process of trial. These are so
familiar: the right to a lawyer's hel
right to appeal to a higher court to
processes of trial.

The matter of a right to counsel at a
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that the judge and jury sit impartial
aspects of the case unfold before the

TION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Checks on the police like those suggested above are not always effective. As each check is examined, students should also consider some of the limitations of these checks. Notwithstanding the limitations of these checks, such protections are a necessity if good processes are to be meaningful.

4. Checks on the trial processes in applying the law.

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The final part of Understanding II concerns checks on the process of trial. These are somewhat familiar: the right to a lawyer's help and the right to appeal to a higher court to challenge the processes of trial.

The matter of a right to counsel at a criminal trial raises a related issue that may be of interest: should a lawyer defend a case when he believes his client is guilty as charged? The answer to this question goes to the whole nature of our judicial system. Most lawyers have no trouble in taking a case where they personally think a client is guilty. Yet many people question this practice. Ours is a system where the lawyer is not supposed to pass judgment. It is an "adversary system." This system assumes that the best way to get all aspects of a case on the table—so a just result can be reached—is for each side to place his view of the case before a court in the strongest possible way. This is the job of a lawyer—to present an honest, but one-sided, view of the case as best he can. Of course, a lawyer on the other side of the case (the adversary) is doing the same thing. The theory is that the judge and jury sit impartially as all aspects of the case unfold before them. Then they

DETAILED DESCRIPTION OF STRATEGIES

to counsel for indigent defendants. The classic case is Gideon vs. Wainwright. The following is one possible title. Many others are available.

—*"Gideon's Trumpet,"* NBC-TV. 54 min. Traces the case of Clarence Gideon in which the Supreme Court declared that poor defendants must be provided with legal counsel.

DISCUSSION OF STRATEGIES AND RESOUR

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This is not the only way the judicial process can be carried on. In some systems, the judge directs inquiry rather than leaving the initiative to the lawyers. The principal argument in favor of the adversary system is that the adversary clash should leave relatively few stones unturned. The principal criticism of this approach is that court cases become a contest of lawyer's skills rather than a means to reaching a just result.

Module 3

## RESOURCES*

United States Constitution, Amendments IV, V, VI, VIII

Process protections of the Bill of Rights:

- —Right to be free from arrest unless there is *"probable cause"* to believe th is guilty. (4th)
- —Right to be secure from *"unreasonable search and seizure."* (4th)
- —Protection from warrants for search or seizure unless the *warrant from a ju* particularly the place, person, or thing to be searched or seized. (4th)
- —An accused will be protected from prosecution of serious Federal offenses u *grand jury* of fellow citizens thinks the prosecutor's evidence is strong en be reason to start a prosecution. (5th)
- —An accused is protected from being *prosecuted twice* for the same crime. (5
- —An accused has a right to *remain silent* at all times (before and during the rather than say anything that might be used against him. (5th)
- —An accused has a right to be *tried within a reasonable time* after his arres
- —An accused has a right to have his *trial open to the public.* (6th)
- —An accused has a right to have a *jury* determine his guilt or innocence. (6
- —An accused has a right to *be told of what crime* he is being accused. (6th)
- —An accused has a right to *cross-examine* the witnesses against him. (6th)
- —An accused has a right to *bring witnesses in his favor* to court. (6th)
- —An accused has a right to *assistance from a lawyer.* (6th)
- —An accused is protected from *excessive bail or fines.* (8th)
- —A convicted accused shall be protected from *cruel and unusual punishment.*

Films:

"Bill of Rights in Action, Story of a Trial," 22 min. Color. Bernard Wilets

Film follows two people arrested for a misdemeanor offense; shows how the pro in arrest, arraignment, and trial protect the rights of an accused person. S are real -- actual policemen, lawyers and judge appear as participants using own words -- everyday language of law and law enforcement.

*Direct quotations from statutes are indicated by the use of quotation marks. Other s summaries or paraphrases of the statute listed.

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Module 3

AEP (American Educational Publications). Rights of the Accused.

Traces a hypothetical case from incident to verdict.

Bassiouni, et al. *Crimes and justice.* pp. 45-48.

Goodykoontz, William. *Law, you, the police and justice.* pp. 61-75.

Gibson, W. M., *Lessons in conflict.*

Ex Parte Sullivan, vol. 107 Federal Supplement, p. 514 (1952).

The murder conviction of two boys was reversed, the court explaining that because the boys were denied the help of counsel and therefore had no intelligent notion of what was going on as the police questioned them and built an airtight case against them, there had been a denial of fundamental justice.

Sample Statute:

New York Penal Law, Section 195 - "Official Misconduct"

...states that official misconduct is a Class A misdemeanor

...that a public servant is guilty of official misconduct if, when he intends to obtain something worthwhile or deprive another person of a benefit, he commits an unauthorized act in connection with his job or does not perform duties which are imposed by law in connection with his job.

Sample Cases:

People ex el Reardon vs. Flynn, vol. 111 New York Supplement. p. 1065 (1908).

In this particular case, a police officer entered a saloon and without any reason whatsoever pointed his pistol at the plaintiff and called her "bad names." The woman became so frightened she became ill. No arrests were made. However a judge decided the policeman was guilty of oppression.

Module 3

Sample Statute:

United States Code, Title 42, "Public Health and Welfare" -- "Civil Rights" Sect "Civil Action for Deprivation of Rights."

> "Every person who, under cover of any statute, ordinance, regulation, custom usage, of any State or Territory, subjects or causes to be subjected any U.S or other person within the jurisdiction of U.S. to the deprivation of any ri privileges, or immunities secured by the Constitution and laws shall be liab an action at law, a suit or other proper proceeding for redress."

Sample Cases:

Monroe vs. Pape, vol. 365 U.S. Reports, p. 167 (1961).

Allowing a suit against 13 Chicago policemen who entered a house at 5:30 a.m. a warrant, stood a husband and wife and six children naked before them, calle names, beat them, took the man in for 12 hours of questioning without letting anyone, and released the man after finding there wasn't any evidence against (Case also discussed in The Law and American History, p. 147-148.)

Mapp vs. Ohio, vol 367 U.S. Reports, p. 643 (1961).

The court reversed a conviction of possession of lewd literature where all th for conviction came from a search that disregarded processes limiting search The court noted that if "excluding from evidence" all information gotten when are disregarded is the only way to discourage disregard of process, the const requires such "exclusion." (This case is also discussed in Liberty Under Law p. 23-26.)

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Chapter 5 - "Legal processes to discourage adoption of unwise laws and to co applications of laws." Ginn and Company. 1973.

Symposium, "The Right to Counsel and the Unpopular Cause," in vol. 20 Universit Pittsburgh Law Review, p. 725 and following (1959). Reprinted by permission the University of Pittsburgh Press.

> "...the right to counsel means the right to adequate representation. ...th that an accused, regardless of what he is charged with and regardless of hi

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political persuasion or racial or religious background, is entitled to get a
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the fact. There are some people and many newspaper editors who are ready and
to associate the supposed guilt of the client with the lawyer himself. And a
accused of a crime which happens to be unpopular at a given time is liable to
that he cannot get a "respectable" lawyer to take his case because the lawye
afraid of being associated with the public reputation of his client.

"The problem of representing an unpopular cause is certainly not new to our
As far back as 1770 honorable members of the Bar of this country felt the imp
anger of public opinion when defending an unpopular cause. ...Josiah Quincy,
John Adams, were asked to defend the British soldiers who had participated in
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"...The continued inactivity of leading lawyers in these areas of unpopulari
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"What can be done to stop this unfortunate trend away from adequate representation? The answer is that the Bar, as an organized body, must take a forthright and positive stand in favor of the right to counsel. It must give its members the support of its influence and prestige and help them thereby to overcome countervailing social pressures. ...

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The Lincoln Filene Center for Citizenship and Public Affairs. *The courts make The story of Clarence Earl Gideon.* Tufts University. Medford, Massachusett

____. *The police: Fact and fiction.* Tufts University. Medford, Massachuset

Also available from the Center:

—a film, *The police: Fact and fiction.* 28 min. b/w.

—*Young person and the court.* 28 min. b/w.

A cartoon from Punch Magazine, September 16, 1970 has been omitted here because of copyright restrictions.

See text, page 109.

(Drawing by Thelwell. Copyright September 16, 1970, Punch Magazine. Reprinted by permi Roth Agency, Inc.)

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Module 3

UNDERSTANDING III

MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIA

A. *Explanation of Understanding III*

One important value our legal system pursues is good processes. As is often the comes into conflict with other values that the law pursues, values such as protecting soci criminals, facilitating the efficient performance of the jobs of law enforcement officers, government economically. In some circumstances, good processes are achieved only at some e of these values. Thus, it can be said that securing good processes has some social "cost. obvious if we consider that one very effective way to protect adherence to good processes forbid use in court of evidence that is collected in disregard of the relevant processes f evidence. If other evidence is unavailable, this may mean that a guilty man will go free. police in this way to respect rights to silence, rights to privacy, rights to counsel, etc efficient law enforcement is made harder. Not only do these processes serve to protect th they may also protect the guilty. Finally, the formalities of pursuing good processes mea literal sense. A great deal of money is required to conduct a fair trial; a great deal mo quired in many places to make processes such as speedy trial or correctional institutions than mere ideals.

B. *Teaching Understanding III*

OBJECTIVES

- For each personal protection of the individual, the student can list a social anc that society pays for the application of legal processes.
- For each failure to act or distortion of the application of legal processes, the list a social and a dollar cost that society must pay.
- Given statistical evidence of the cost of law enforcement and of the court system can cite evidence of the worth of these costs to the individual.

QUESTIONS TO REACH UNDERSTANDING

- How does maintaining sound processes of criminal law involve some cost to society
- Are the costs to society of securing fair processes of criminal law worth it?

III
NG SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

*f Understanding III*

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REACH UNDERSTANDING

maintaining sound processes of criminal law involve some cost to society?

costs to society of securing fair processes of criminal law worth it?

Module 3

## USE OF VISUALS

- Use a film such as those in E.B.F.'s series on the Bill of Rights, with students to analyze it in terms of social costs of the application of legal processes; us evidence drawn from the film or films, debate the question: Resolved, society ca the cost of applying basic legal processes to protect the accused.
- Convert statistical evidence of the cost of applying legal processes to protect to pictorial charts or collages intended to persuade the average citizen that th fiable cost of government.
- Use the program from the New York State Historical Association, *Painting as Soc Justices' Court in Back Woods*. What evidence is there of the application of leg to processes to protect the individual? Are the costs of the procedure the same be today? Why do you think that there might be a difference in the degree of ju accused? What kind of person would be most likely to get justice in this court

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DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOU

1. The scope of the problem of crime control in our society.

a) Place on opaque projector some of the graphs and charts dealing with crime in America. Have pupils analyze some of the following situations: Rate of Increase in Crimes, Areas of Increase, Monies Spent on Law Enforcement. See if pupils can analyze on Charts #1, #2, and # 3 where their city would fit as far as violent property crimes are covered. See pp. 127, 128, and 129.

b) Assign some of the pupils in class the task of looking up in their local newspaper articles on the type and rate of crimes occurring in their community. Some of the pupils could then interview the law enforcement agents and report back to the class on what possible threats this crime trend might pose to the community.

Having looked at the value of good
Understanding I and the need to po
of officials to such processes in
Understanding III surveys the cost
good processes in the area of crim

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at stake. Without effective crimi
courage people from interfering wi
and property of others, the most b
dom and security that goes along w
threatened.

However, securing good law process
possible at the expense of protect
"bad actors." To state an extreme e
life would be more orderly and th
greater security from criminals if
not have to respect any process ri
citizen. The remaining procedures
ing III look at particular costs o
good processes in applying the cri

2. Cost #1: Protecting processes by, in effect, letting the guilty go unpunis

a) At this point, the teacher should recall to the minds of the pupils that the most widely used and apparently most effective check on abuse of processes is nullification of the conviction of a guilty man by not allowing

The first cost of securing good cr
is actually letting some criminals
threaten society further. As note
hibiting the use of evidence in co
gathered while disregarding presc

ON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The scope of the problem of crime control in our society.

opaque projector some of the
d charts dealing with crime in
Have pupils analyze some of the
situations: Rate of Increase
, Areas of Increase, Monies Spent
forcement. See if pupils can
n Charts #1, #2, and # 3 where their
d fit as far as violent property
e covered. See pp. 127, 128, and 129.

he of the pupils in class the task
g up in their local newspaper
on the type and rate of crimes
in their community. Some of the
uld then interview the law enforce-
ts and report back to the class on
ible threats this crime trend might
he community.

Having looked at the value of good processes in Understanding I and the need to police the conformity of officials to such processes in Understanding II, Understanding III surveys the cost of perserving good processes in the area of criminal law.

The first procedure suggests looking at the size of the growing problem that crime presents to our society. Thus, in the area of criminal law, society in general, like the accused individual, has much at stake. Without effective criminal laws to discourage people from interfering with the persons and property of others, the most basic kind of freedom and security that goes along with order is threatened.

However, securing good law processes may only be possible at the expense of protecting society from "bad actors." To state an extreme example, surely life would be more orderly and there would be greater security from criminals if the police did not have to respect any process rights of the accused citizen. The remaining procedures of Understanding III look at particular costs of trying to secure good processes in applying the criminal law.

ost #1: Protecting processes by, in effect, letting the guilty go unpunished.

oint, the teacher should recall to
of the pupils that the most widely
apparently most effective check on
processes is nullification of the
n of a guilty man by not allowing

The first cost of securing good criminal processes is actually letting some criminals go free to threaten society further. As noted earlier, prohibiting the use of evidence in court that has been gathered while disregarding prescribed processes is

DETAILED DESCRIPTION OF STRATEGIES

officials to use evidence against him at trial that they got in disregard of constitutionally required processes. Such guilty men will go free unless there is other, untainted, evidence sufficient to convict the accused. Pupils should be able to mention some of the cases that have been dismissed because the processes involving the rights of the defendant were abused or ignored. See *Judgment: Case Study No 3, Case Study No. 4, Case Study No. 6, Case Study No. 9, Case Study No. 12.*

b) Have pupils debate the question: Is it worth the cost of protecting processes if this means possibly turning some guilty rapists, murderers, or arsonists loose to harm people and property again? By this time the pupils should have a very good background in this area so that limited research will be required on their part.

DISCUSSION OF STRATEGIES AND RES

the most widely used and effecti
rights. This can mean that *any*
lead to conviction does not reac
it does reach the jury, use of s
grounds for appeal and nullifica
based on this evidence. Where a
versed on these grounds, the acc
sarily go free. The higher cour
use of particular evidence at a
If, at a new trial, the prosecuto
tion using other evidence, there
conviction. The new trial is no
double jeopardy because the new
continuation of the first prosec
prosecution for the same offens

3. Cost #2: Increasing the difficulty of effective law enforcemen

a) Pose this question to pupils: Can the interest of protecting good processes guaranteed to individuals according to the fourth, fifth, sixth and eighth amendments be in conflict with the interest of effective law enforcement? Have pupils consider the above question in line with the hypothetical cases on page 130.

Perhaps securing sound processe
of the criminal law is most cos
the police. Law enforcement is
only do certain processes make
in some cases these processes m
part of the police practically
problem is this: in order to p
and proceed in a fair manner, t
being forced to "coddle" some g

o use evidence against him at
they got in disregard of consti-
required processes. Such guilty
free unless there is other, un-
vidence sufficient to convict the
Pupils should be able to mention
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e processes involving the rights
endant were abused or ignored.
*nt: Case Study No 3, Case Study*
*e Study No. 6, Case Study No. 9,*
*No. 12.*

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possibly turning some guilty
urderers, or arsonists loose to
e and property again? By this
upils should have a very good
in this area so that limited
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the most widely used and effective protection of rights. This can mean that *any* evidence that might lead to conviction does not reach the jury. Or if it does reach the jury, use of such evidence may be grounds for appeal and nullification of a conviction based on this evidence. Where a conviction is reversed on these grounds, the accused does not necessarily go free. The higher court merely says that use of particular evidence at a trial was wrong. If, at a new trial, the prosecutor can get a conviction using other evidence, there may still be a conviction. The new trial is not considered to be double jeopardy because the new trial is merely a continuation of the first prosecution, not a second prosecution for the same offense.

### 3. Cost #2: Increasing the difficulty of effective law enforcement.

question to pupils: Can the
f protecting good processes
to individuals according
rth, fifth, sixth and eighth
be in conflict with the
f effective law enforcement?
s consider the above question
th the hypothetical cases
0).

Perhaps securing sound processes for application of the criminal law is most costly in its impact on the police. Law enforcement is a tough job. Not only do certain processes make this job tougher, but in some cases these processes make efficiency on the part of the police practically impossible. The problem is this: in order to protect the innocent and proceed in a fair manner, the police may end up being forced to "coddle" some guilty people,

## DETAILED DESCRIPTION OF STRATEGIES

b) Have pupils view a film dealing with the conflict between law enforcement and the preservation of civil rights. The following are two possible titles. Others might be available through your local audiovisual center:

—"In the Name of the Law," color. 14 min.
  - Considers the question of what is causing the breakdown of law and order in our cities. Shows how the police are caught in the crossfire between black rage and white fear.

—"Super Cop."
  - Depicts police commmunity relations in Philadelphia community.

(Both films can be ordered from NBC Educational Media)

c) Invite a member of the local police force on the district attorney's office to speak to the class on his views on the difficulty of the law enforcement job in light of recent court rulings regarding protecting legal processes of individuals. A question-answer session by pupils could follow.

d) Have pupils debate the following question after preliminary research. At this stage of development of certain concepts in the module, pupils should have a grasp of background materials to aid in preparing their debate: Is it worth the cost of protecting processes if it results in making the police's task of enforcing law more difficult?

## DISCUSSION OF STRATEGIES AND RESO

including some hardcore, professi
The stories suggested in the proc
show how an interest in efficient
can clash head-on with an interes
good processes. The answer to su
often easy, and the courts contin
balance these interests.

## N OF STRATEGIES

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dia)

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terials to aid in preparing their
Is it worth the cost of protecting
if it results in making the police's
nforcing law more difficult?

## DISCUSSION OF STRATEGIES AND RESOURCES

including some hardcore, professional criminals. The stories suggested in the procedures attempt to show how an interest in efficient law enforcement can clash head-on with an interest in preserving good processes. The answer to such clashes is not often easy, and the courts continually struggle to balance these interests.

DETAILED DESCRIPTION OF STRATEGIES

e) Open up for class discussion and comments on the following: Bumper stickers read: "Support your local police and the next time you're in trouble call a hippie." Do they think there are problems that exist in our society which result in such slogans? Pupils' concepts of what the police and what a hippie mean to them might be brought out in discussion.

4. Cost #3: Good processes cost tax dollars.

a) Teachers should be able to secure a copy of the budget of their village, city, or county. Make use of the opaque projector to show pupils the budget. See if they can pick out how much money is being spent by the local government on the administration of justice in the local courts. In considering the above question, have pupils suggest the additional expenses that might be necessary to improve the processes necessary in the application of criminal law such as speedy trials, better paid police, and a better prison system. You might use the graphs and charts from various government agencies. See pp. 127-129, to help pupils draw some conclusions about this topic.

b) Pupils might arrive at a decision concerning where their priorities lie by debating the following topic after ample preparation: Is it worth it to spend millions ensuring legal processes when the money

DISCUSSION OF STRATEGIES AND RESOU

The final cost of securing sound p
in a literal sense. Courts and co
cost money as police work and hand
ed criminals do. Much more could
ing the processes by which crimina
For example, millions of tax dolla
pay police in accordance with the
of the job they perform, to increa
courts and judges, and to improve
so that rehabilitation might be po

In recent years, plea bargaining ha
save the time of overworked distri
the expense of trials. Plea barga
ment between the district attorney
who pleads guilty to a less seriou
*possession* of drugs rather than *se*
than 90 percent of the serious cas
settled by plea bargaining. Altho
are saved by this process, injusti
from plea bargaining; i.e., a pers
guilty, but he might not want to r
guilty of a more serious crime.

TION OF STRATEGIES

for class discussion and comments
ollowing: Bumper stickers read:
your local police and the next
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our society which result in
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Is it worth it to spend millions
legal processes when the money

DISCUSSION OF STRATEGIES AND RESOURCES

The final cost of securing sound processes is cost in a literal sense. Courts and court processes cost money as police work and handling convicted criminals do. Much more could be spent improving the processes by which criminal law operates. For example, millions of tax dollars are needed to pay police in accordance with the social importance of the job they perform, to increase the numbers of courts and judges, and to improve penal institutions so that rehabilitation might be possible.

In recent years, plea bargaining has been used to save the time of overworked district attorneys and the expense of trials. Plea bargaining is an agreement between the district attorney and a defendant who pleads guilty to a less serious crime; e.g., *possession* of drugs rather than *selling* drugs. More than 90 percent of the serious cases in New York are settled by plea bargaining. Although time and money are saved by this process, injustices could result from plea bargaining; i.e., a person may not be guilty, but he might not want to risk being found guilty of a more serious crime. Conversely,

DETAILED DESCRIPTION OF STRATEGIES

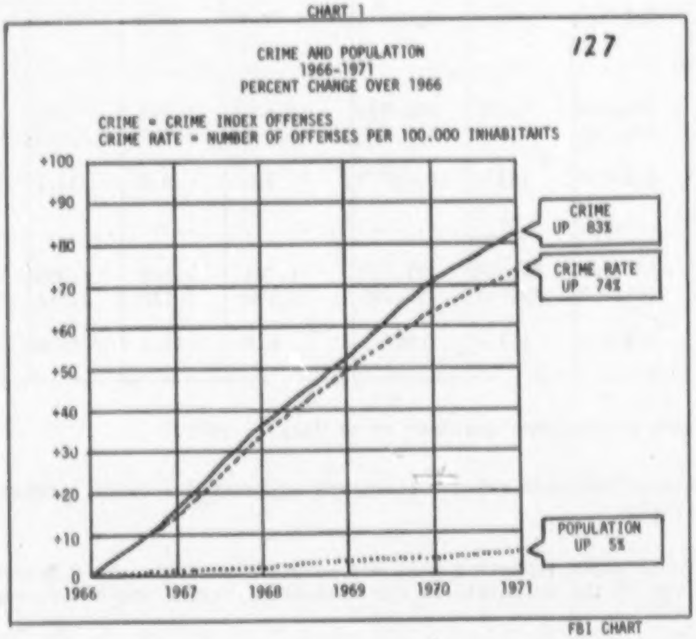
could be well spent on areas that are crying for improvement such as pollution, health, and education?

c) Inform pupils of the meaning of plea bargaining. (See page 126.) Inform them that 90 percent of the serious cases in New York State are settled in this way. In their opinion, how just is this method as far as desired outcome and fairness in application of the law?

DISCUSSION OF STRATEGIES AND RESOURC

simply because we do not have the re prosecute suspects properly, some cr of serious crimes may get off *easy* society, possibly to do more harm.

CHART 1



FBI CHART

(From United States Dept. of Justice, Federal Bureau of Investigation, *Uniform Crime Report*

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g. (See page 126.) Inform them
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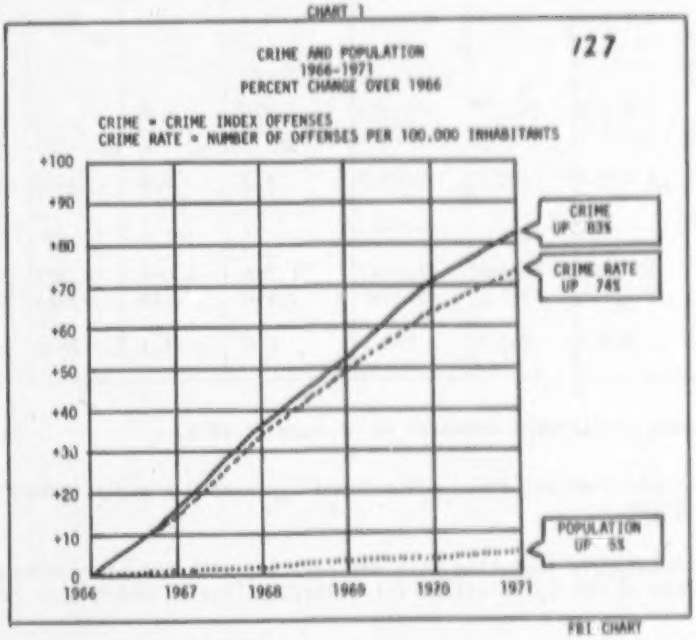
e are settled in this way. In
nion, how just is this method as
sired outcome and fairness in
on of the law?

simply because we do not have the resources to prosecute suspects properly, some criminals guilty of serious crimes may get off *easy* and return to society, possibly to do more harm.

CHART 1



FBI CHART

s Dept. of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*, page 2.)

## CHART #2- INDEX OF CRIME, UNITED STATES, 1971

| Area | Population[1] | Total Crime Index | Violent[2] crime | Property[2] crime | Murder and non-negligent man-slaughter | Forcible rape | Robbery | Aggravated assault | Burglary | La $5 |
|---|---|---|---|---|---|---|---|---|---|---|
| **United States Total** | 206,256,000 | 5,995,211 | 810,018 | 5,185,193 | 17,627 | 41,889 | 385,908 | 364,595 | 2,368,423 | 1,8 |
| Rate per 100,000 inhabitants | ........... | 2,906.7 | 392.7 | 2,514.0 | 8.5 | 20.3 | 187.1 | 176.8 | 1,148.3 | |
| **Standard Metropolitan Statistical Area** | 145,878,000 | .......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ... |
| Area actually reporting[3] | 97.6% | 5,106,494 | 709,246 | 4,397,248 | 13,675 | 35,106 | 370,643 | 289,822 | 1,988,830 | 1,5 |
| Estimated total | 100.0% | 5,173,916 | 715,731 | 4,458,185 | 13,845 | 35,575 | 372,486 | 293,825 | 2,015,759 | 1,5 |
| Rate per 100,000 inhabitants | ........... | 3,546.7 | 490.6 | 3,056.1 | 9.5 | 24.4 | 255.3 | 201.4 | 1,381.8 | |
| **Other Cities** | 23,068,000 | .......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ... |
| Area actually reporting | 89.1% | 393,215 | 39,332 | 353,883 | 1,026 | 1,965 | 7,083 | 29,258 | 154,562 | |
| Estimated total | 100.0% | 436,145 | 44,522 | 391,623 | 1,192 | 2,177 | 7,874 | 33,279 | 171,744 | |
| Rate per 100,000 inhabitants | ........... | 1,890.7 | 193.0 | 1,697.7 | 5.2 | 9.4 | 34.1 | 144.3 | 744.5 | |
| **Rural** | 37,309,000 | .......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ... |
| Area actually reporting | 74.8% | 304,206 | 33,089 | 271,117 | 1,705 | 3,044 | 4,068 | 24,272 | 146,321 | |
| Estimated total | 100.0% | 285,150 | 49,765 | 335,385 | 2,590 | 4,130 | 5,548 | 37,491 | 180,920 | |
| Rate per 100,00 inhabitants | ........... | 1,032.3 | 133.4 | 898.9 | 6.9 | 11.1 | 14.9 | 100.5 | 484.9 | |

[1] Population is Bureau of the Census provisional estimate as of July 1, 1971.

[2] Violent crime is offenses of murder, forcible rape, robbery and aggravated assault; property crime is offens larcency $50 and over and auto theft.

[3] The percentage representing area actually reporting will not coincide with the ratio between reported and es since these data represent the sum of the calculations for individual states which have varying populations, and crime rates.

(From United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*.)

## HART #2- INDEX OF CRIME, UNITED STATES, 1971

| Population[1] | Total Crime Index | Violent[2] crime | Property[2] crime | Murder and non-negligent man-slaughter | Forcible rape | Robbery | Aggravated assault | Burglary | Larceny $50 and over | Auto theft |
|---|---|---|---|---|---|---|---|---|---|---|
| 06,256,000 | 5,995,211 | 810,018 | 5,185,193 | 17,627 | 41,889 | 385,908 | 364,595 | 2,368,423 | 1,875,194 | 941,576 |
| ........... | 2,906.7 | 392.7 | 2,514.0 | 8.5 | 20.3 | 187.1 | 176.8 | 1,148.3 | 909.2 | 456.5 |
| 145,878,000 | ......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ......... | ....... |
| 97.6% | 5,106,494 | 709,286 | 4,397,248 | 13,675 | 35,106 | 370,643 | 289,822 | 1,988,830 | 1,542,374 | 866,044 |
| 100.0% | 5,173,916 | 715,731 | 4,458,185 | 13,845 | 35,575 | 372,486 | 293,825 | 2,015,759 | 1,566,824 | 875,602 |
| ........... | 3,546.7 | 490.6 | 3,056.1 | 9.5 | 24.4 | 255.3 | 201.4 | 1,381.8 | 1,074.1 | 600.2 |
| 23,068,000 | ......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ......... | ....... |
| 89.1% | 393,215 | 39,332 | 353,883 | 1,026 | 1,965 | 7,083 | 29,258 | 154,562 | 163,293 | 36,028 |
| 100.0% | 436,145 | 44,522 | 391,623 | 1,192 | 2,177 | 7,874 | 33,279 | 171,744 | 179,867 | 40,012 |
| ........... | 1,890.7 | 193.0 | 1,697.7 | 5.2 | 9.4 | 34.1 | 144.3 | 744.5 | 779.7 | 173.5 |
| 37,309,000 | ......... | ....... | ......... | ......... | ....... | ....... | ....... | ......... | ......... | ....... |
| 74.8% | 304,206 | 33,089 | 271,117 | 1,705 | 3,044 | 4,068 | 24,272 | 146,321 | 103,926 | 20,870 |
| 100.0% | 285,150 | 49,765 | 335,385 | 2,590 | 4,130 | 5,548 | 37,491 | 180,920 | 128,503 | 25,962 |
| ........... | 1,032.3 | 133.4 | 898.9 | 6.9 | 11.1 | 14.9 | 100.5 | 484.9 | 344.4 | 69.6 |

u of the Census provisional estimate as of July 1, 1971.

ffenses of murder, forcible rape, robbery and aggravated assault; property crime is offenses of burglary,
er and auto theft.

resenting area actually reporting will not coincide with the ratio between reported and estimated crime totals
present the sum of the calculations for individual states which have varying populations, portions reporting,

epartment of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*.)

### Chart # 3

### CRIMINAL JUSTICE SYSTEM—PUBLIC EXPENDITURES, 1970, BY LEVEL OF GOVERNMENT

[Expenditures in millions of dollars except per capita.]

| Level of Government and Activity | Expenditures 1970 Total | Expenditures 1970 Per capita[1] |
|---|---|---|
| All governments | [2]8,571 | [2]41.56 |
| Police | 5,080 | 24.63 |
| Judicial | 1,190 | 5.77 |
| Prosecution[3] | 442 | 2.14 |
| Indigent defense[3] | 102 | .49 |
| Correction | 1,706 | 8.27 |
| Federal Government | [2]978 | [2]4.74 |
| Police | 589 | 2.86 |
| Judicial | 129 | .63 |
| Prosecution[3] | 102 | .49 |
| Indigent defense[3] | 56 | .27 |
| Correction | 83 | .40 |
| State Government | [2]2,134 | [2]10.37 |
| Police | 689 | 3.34 |
| Judicial | 282 | 1.37 |
| Prosecution[3] | 83 | .40 |
| Indigent defense[3] | 9 | .04 |
| Correction | 1,051 | 5.10 |
| Local Government | [2]5,454 | [2]26.44 |
| Police | 3,803 | 18.44 |
| Judicial | 779 | 3.78 |
| Prosecution[3] | 257 | 1.25 |
| Indigent defense[3] | 37 | .18 |
| Correction | 572 | 2.77 |

[1] Based on estimated population as of July 1, 1971, excluding Armed Forces abroad.

[2] Includes residual amounts not shown separately.

[3] Prior to 1969, not included as part of the criminal justice system totals.

(Adapted from *Statistical Abstract*.)

## RESOURCES*

United States Statistical Abstract, 1971.
Federal Bureau of Investigation. *Uniform Crime Reports.*

Sample hypothetical cases:

Suppose there has been a series of violent robberies in the area of the local s
center. All the police know is that the robbers have been teenagers and, in ea
have had guns and threatened to shoot their victims. At midnight on a Wednesda
two high school boys are walking home through the area. A patrol car pulls up.
the police be able to frisk the boys before inquiring what they are doing out a
hour?

Look at the language of the fourth amendment. What about the boys' right to be
from "unreasonable searches and seizures...except upon probable cause..."? Wha
were the policeman and were afraid these boys might shoot you?

Suppose the police, the next week, arrest a suspect in this robbery case, and it
teenager at all, but Little Louie. Louie is connected with organized crime and
time on four prior occasions for armed robbery. In fact, each time Louie has
serving a sentence, he has committed a robbery within 3 days of being released
Louie's arrest and charge, he wishes to post bail and go free until the trial.

The police fear that the only way to protect the community from further robbers
set bail so high that Louie can't possibly raise it or else deny bail complete
Louie waits to be tried.

Look at the language of the eighth amendment. What about Louie's right to bai
right to be considered innocent until proved guilty in a court of law? And wh
the threat to the lives and property in the community?

Suppose now that Louie did post bond, did not commit any further robberies, an
up for trial. As it turns out the police got their original lead in apprehend
from a stool pigeon's tip that the robberies weren't done by teenagers, but by
disguise. Before the "stoolie" gave the tip, he had the police promise they w
reveal his identity. The "stoolie" feared, and the police suspect the fear mi

---

*Direct quotations from statutes are indicated by the use of quotation marks. Other sta
summaries or paraphrases of the statute listed.

# RESOURCES*

ted States Statistical Abstract, 1971.

eral Bureau of Investigation, *Uniform Crime Reports*.

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tations from statutes are indicated by the use of quotation marks. Other statements are or paraphrases of the statute listed.

founded, that Louie's organized crime connections might "rub him out" if they fou he was the squealer. Louie says the stoolie's information is untrue, and he want lawyer to show this on cross-examination at a public trial.

Look at the language of the sixth amendment. What about Louie's right to be "con with the witnesses against him"? But what happens to an important source of poli and information if the identity of "informers" must be made public?

***********

Dan Smith is a young teacher. Outside school he works with several civic groups. chairman of the local Vietnam War protest group for November 15, 1970.

The November 15 moratorium, contrary to what local officials have warned, is peac well supported. On the night of November 15, Dan's home is bombed with powerful Dan loses a leg and his eyesight; his wife and two baby children are killed.

The police go to work on the case. After a week they don't have a shred of evide single lead. They get an annonymous phone call that simply says, "You might chec Bomber in connection with the Smith murders." The caller hangs up. The police, c basis of this phone call alone, arrest Bomber. Bomber refuses to talk until he ge lawyer. The police refuse to let him see his lawyer until he talks. While objec the refusal of his request for counsel, Bomber confesses to the bombing. The pol no other evidence. At the trial, Bomber denies everything.

Should Bomber be convicted or go free? Look at the fifth and sixth amendments. about Joe Bomber's right to have the assistance of counsel and right against self incrimination? What about the threat this kind of man poses to the community?

d, that Louie's organized crime connections might "rub him out" if they found out
the squealer. Louie says the stoolie's information is untrue, and he wants his
to show this on cross-examination at a public trial.

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**********

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lead. They get an annonymous phone call that simply says, "You might check Joe
in connection with the Smith murders." The caller hangs up. The police, on the
of this phone call alone, arrest Bomber. Bomber refuses to talk until he gets a
. The police refuse to let him see his lawyer until he talks. While objecting to
efusal of his request for counsel, Bomber confesses to the bombing. The police have
er evidence. At the trial, Bomber denies everything.

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A cartoon by Tidy has been omitted here because of copyright restrictions. It is from Punch Ma s
July 1, 1970.

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Ben Roth Agency, Inc.) ge

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# MODULE IV: SOME LIMITS OF LAW*

## 1. *The Main Focus.*

"There oughta be a law!" People who gripe about some problem, frequently voice this plea. This little be a law," makes it sound as if laws could do anything and everything. Laws can and do accomplish many importan through laws tax dollars are collected and spent on public benefits such as education, parks, hospitals, defense, late and coordinate activities that might otherwise be unsafe or inefficiently conducted such as transportation, facturing, etc. Laws punish certain harmful acts to discourage those who might take advantage of others. Throug vide a process for people to settle private disputes when they cannot settle them on their own. Laws also back u like wills, leases, and employment agreements.

Law performs many important functions in society, but often law is not successful or effective in accom intended. Many things might explain the ineffectiveness of law: (1) A law might be ineffective because it is an (voting age could be set at 6 years of age or speed limits in school zones could be set at 55 mph). (2) A law mig cause the processes by which law is applied are bad, not the law's content. (A welfare law might be sound, but b way that is wasteful or unfair; criminal statutes might be unreasonable, but their enforcement and prosecution c police disregard the rights of the accused or if courts are so crowded that suspects must wait months in jail bef (3) A law might be ineffective because governmental officials may put inappropriate legal resources to work on a prohibition, the law's penal resource was used almost exclusively to deal with intemperance; since the repeal of p latory and benefit distribution resources have also been put to work on problems of alcohol abuse.)

The three possible explanations for ineffective operation of laws (unsound content; unsound processes; legal resources) are treated in some detail in the material for Modules II and III and will not be repeated here.

The primary point in this unit is that even when law is operating effectively, there are certain inhere law can be expected to accomplish. Because of the nature of law, men, and society, some things are beyond law's r working well. For example, no law can make people respect human dignity or even force a person to love another p ings in this unit provide a brief survey of some inherent limitations of law.

## 2. *Why This Focus?*

Why study inherent limits of law in a law unit for social studies? First, in studying law, we may wish general characteristics about law's nature, one of which is simply that law is not all-powerful. Second, many pe today, and some of this disrespect is undeserved. Certainly laws can be improved and used more effectively on so one sees that there are limits to what can be reasonably expected of law, he may become unduly and unnecessarily and the legal system. The result of this might be loss of respect for the rule of law which is necessary in a fr in a democracy, laws in large part reflect what concerned people demand. Many students today want to improve our legal change. By learning about some of law's limits, tomorrow's citizens may be able to spend their energies i through law.

## 3. *Outline of the Teaching Scheme.*

Five understandings in this unit provide illustrative examples of some tasks that, by the very nature c beyond the capacity of law to perform: (1) laws cannot simultaneously promote conflicting valid interests, (2) without support of certain nonlegal factors, (3) laws cannot control certain intangible things like thoughts and cannot repair some kinds of injuries; and (5) laws cannot always determine the "true" facts. Each of the five un trates the broader concept this unit is designed to reach—that law as an instrument of social control is not all There is no order that is necessarily proper in treating the five understandings. The teacher might organize and standings as he sees fit.

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*See footnote on page 1, Module 1.

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Module 1.

## SUMMARY OF UNDERSTANDINGS

I. IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERES THAT CONFLICT, LAW IS LIMITED IN ITS CAPACITY TO PROMOTE BOTH.

II. THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY CERTAIN NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

III. SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY SOME OVERT BEHAVIOR OR ACTIVI TO REGULATE.

IV. IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTH LAW MAY CONFRONT SOME KINDS OF HARM THAT ARE BEYOND ITS LIMITE POWER TO REPAIR OR COMPENSATE.

V. ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTE FACTS RATIONALLY AND FAIRLY, CIRCUMSTANCES MAY LIMIT THE ABILI OF JUDGES AND JURORS TO DETERMINE THE FACTS.

## UNDERSTANDING I

IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT IN ITS CAPACITY TO PROMOTE BOTH.

### A. *Explanation of Understanding I*

Law is used in society to help promote numerous interests or ends. Laws help including a healthy environment. Laws help keep community peace. Laws help secure ba help secure equality of opportunity. Laws help structure and organize distribution an resources. Laws help secure such privileges as private ownership.

These and other interests or aims of law are not always easily coordinated. like these, in particular circumstances, may conflict. By promoting one valid interest interfere with another. For example, law's efforts to help secure private ownership m interfere with law's interest in securing equality of opportunity. Freedom to sell or

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articular circumstances, may conflict. By promoting one valid interest, law may of necessity
another. For example, law's efforts to help secure private ownership may in some circumstances
law's interest in securing equality of opportunity. Freedom to sell or rent one's private

property to whomever one pleases may mean no equal opportunity for racial minorities when it
ing decent housing. Law's efforts to secure basic freedoms may in some situations work agai
interest in keeping community peace. By protecting the basic freedom of expression of the sp
unpopular views, law's interest in keeping order and peace in the community is necessarily f

Thus, one of the most fundamental limits of law is something of a logical limitatio
interests may tend to conflict, or even be mutually exclusive. Therefore, sometimes law can
tect two valid important interests at the same time.

## B. *Teaching Understanding I*

### OBJECTIVES

- Given a situation in which the legitimate interests of one party are adversely affe
ruling that promotes the best interests of another, the student can:
  - -assess the consequences of the ruling for each party
  - -state whether the ruling is in the best interests of society in general and suppor
statement with valid arguments.
- Using the newspaper or another source of current interest, the student can identify
two situations in which legitimate interests of various parties are in conflict a
the consequences of a proposed decision to each party.

### QUESTIONS TO REACH UNDERSTANDING

- What does it mean to say that valid interests of law sometimes clash?
- How is law limited when valid interests conflict?
- Why is it important to look very closely at the facts of a case in which valid inte
conflict?

### USE OF VISUALS

- Give the students the statement of Judge Learned Hand that the function of law is
the hearts of people, but to control the disorderly, even at times at the risk of
Ask the students to bring in newspaper and magazine pictures or cartoons that they

one pleases may mean no equal opportunity for racial minorities when it comes to secur-
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udents the statement of Judge Learned Hand that the function of law is "not to reform
of people, but to control the disorderly, even at times at the risk of making them angry."
udents to bring in newspaper and magazine pictures or cartoons that they think are

illustrations of that support or belie this statement. (The cartoon below could be an example.)

Using an opaque projector for total class discussion, or working with small groups the pictures without projection, ask students to:

- identify visual clues that indicate imposition of law, feelings of people involve
- hypothesize "what would happen next" in the situation depicted in the picture.
- suggest ways that the heat of anger could be dispelled without destroying the pea provided by the law.

In the light of such discussion, is Judge Hand's definition of the function of law anyone rephrase it so that the class is better satisfied with it?

A cartoon drawn by Albert has been omitted here because of copyright restrictions. It is from Punch Magazine, October 21, 1970.

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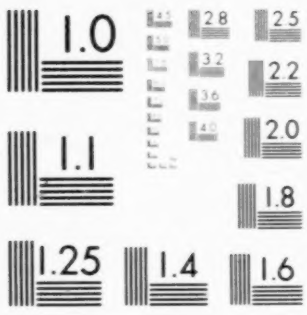

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MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

a) Suggest to the students a hypothetical situation in which a student, running for office in student government, organized a campaign demonstration in the cafeteria during the lunch hour. Several students and several faculty members complained about the noise and confusion during lunch. Use a "fishbowl" technique in which two students in the inner circle speak for the candidate, two for the student opposition, and two for the school faculty. Have one empty chair for the student who wishes to step in the circle, be heard, and step out. Using this format, role-play a faculty-student discussion of the incident, allowing a maximum of 20 minutes. Have the "fishbowl observers" discuss the participants' performances, focusing upon conflicting valid interests represented in the statements.

The class may then decide whether any school rule could be developed that would protect all interests expressed in this case.

### 1. Conflict of valid interests in free expression and public order and welfare.

a) Have students read a synopsis of the case, Feiner vs. New York which is an example of possible conflict of interest between the interests of the community in maintaining peace and order on the streets and the community's interest in maintaining freedom of speech. (See p. 142.) When pupils have a good

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The procedures suggested for this understanding present cases where a court is faced with two legitimate interests of the law that conflict. Perhaps too often, students tend to look at most conflict resolution as a process of selecting between a "right" and "wrong" side. But often, conflicts that find their way into court do not afford the law understanding of the details of the case, assign certain pupils to prepare and present a skit depicting the events that gave rise to this case. In order to evoke student participation in reaching this understanding, the class might role-play the case in the Supreme Court. Given the background facts of the case and the trial court decision, students may argue and decide the case on appeal. Teams of two students might argue each side of the case before nine other students who role-play the Supreme Court in deciding the case. The students who play Supreme Court justices should actually decide which of the valid conflicting interests in the particular situation should prevail, and explain why in a written opinion.

b) Select one or more of the following cases (see pp. 143-145) which are examples of conflict of valid interests between free expression and public order and welfare. Have pupils present a mock television program of the cases. Some of the pupils might be assigned to do visuals with the scenes of their "TV" program.

—Tinker vs. DesMoines School District, vol. 393 U.S. Reports, p. 503 (1969)

—Kovacs vs. Cooper, vol. 336 U.S. Reports, p. 77 (1949)

—Gregory vs. Chicago, vol. 394 U.S. Reports, p. 111 (1969)

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this luxury. The choice is instead between "right" and "right." And when two valid interests clash in a situation that demands legal resolution, the law is limited in the extent to which it can, in the particular instance, pursue both valid interests.

Our legal system seeks to protect free expression of views regardless of their popularity. Free expression has been thought of as one of our most important civil liberties; peaceful expression of divergent views and dissent serve both as a process for expanding knowledge and as a process for securing liberty by subjecting government officials to public scrutiny. An equally fundamental interest of any legal system is preserving order in society, for without order, there is little security for persons or property.

Interests in free expression and interests in order are not always compatible: in many instances unrestricted peaceful free expression (the inflamatory speech, the student protest, the sound truck) may interfere with orderly operations of society. On the other hand, a society of maximum order might suppress all expression except that of official doctrine. Because such valid interests clash, law is limited in the extent to which it can in some circumstances simultaneously protect each. Instead, it must examine in detail situations where such interests conflict and determine in each particular case which interest will be protected and which will give way.

The same rationale holds true when interests in fair police procedures and efficient law enforcement or fair trial and free press come into conflict. In

## DETAILED DESCRIPTION OF STRATEGIES

c) Have pupils view a film or filmstrip on the conflict of free expression vs. public order. (The People of New York vs. Irving Feiner can be used again here.)

- —Freedom to Speak: The Feiner Case. E.B.F. 27 min. color.
- —Bill of Rights in Action: Due Process of Law. BFA. 22 min. color
- —Bill of Rights in Action: Freedom of Speech. BFA. 22 min. color.

2. Conflict of valid interests in fair police procedures ("due process") and effective law enforcement ("law and order").

a) Have students read the details of the following court cases. Assign some pupils to role-play for the rest of the class one of the cases to illustrate a conflict between the legitimate interests of the police in "due process" and facilitating "law and order." (See pages 145-149.)

- —Terry vs. Ohio, vol. 392 U.S. Reports, p. 1 (1968). (Since this case concerns the right of an officer to "stop and frisk" an individual, teenagers may be interested in the details.) See also: Oregon State Bar Association, Search and Seizures for other examples.
- —Berger vs. New York, vol. 388 U.S. Reports, p. 41 (1967) (See page 150.)
- —Miranda vs. Arizona, vol. 384 U.S. Reports, p. 436 (1966) (See page 150.)

## DISCUSSION OF STRATEGIES AND RESOUR

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DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

b) Have pupils view a film or filmstrip on the conflict of fair police procedures vs. efficient law enforcement. The following is a possible title. Check your local film centers for other possibilities.

—Police Power, N.E.T. 60 min. b/w (Panel on conflict between civil liberties and police methods. Panel consists of experts on criminology and law enforcement.)

3. Conflict of valid interest in fair trials and free press.

a) Provide pupils with readings which give details of each of the following cases without giving them the Supreme Court's rulings. See if pupils can arrive at the Supreme Court's decisions in these cases which represent a conflict of valid interest in fair trials with those of free press. (See pages 150-151.)

—Rideau vs. Louisiana, vol 373 U.S. Reports p. 723 (1963)

—Estes vs. Texas, vol. 381 U.S. Reports, p. 532 (1965)

—Sheppard vs. Maxwell, vol. 384 U.S. Reports, p. 333 (1966)

b) Have some pupils prepare and present a debate on the following topic: "An individual can receive a fair trial even if newspapers exercise their rights of free press and print

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

all details related to the case."
In connection with the debate, individuals representing the local newspaper, police, and district attorney's office might be invited to sit in on the debate and express their opinions on the fair trial/free press conflict.

c) Have pupils view a film or filmstrip on the fair trial/free press issue. The following title is one possibility:

—Free Press vs. Fair Trial by Jury--The Sheppard Case. Encyclopedia Britannica Educational Corp. 27 min. (A study of the trial of Dr. Sam Sheppard in 1954. Documentary footage of key figures and reenactment of the crime reveal the conflict between freedom of the press and the right of the accused. Also included, footage on Supreme Court's decision in 1961 reversing original verdict.

Module 4

## RESOURCES*

Feiner vs. New York, vol. 340 U.S. Reports, p. 315 (1951)

"Irving Feiner, an articulate young Syracuse University student,...in a loud, pitched voice, urged his audience of some seventy-five to eighty whites and N to attend a meeting that evening on racial discrimination and civil rights. course of his speech Feiner called the then President Harry S. Truman a 'bum' referred to the Mayor of Syracuse as a 'champagne sipping bum.' He remarked the 'American Legion is a Nazi Gestapo,' and that the colored people should ' up in arms" and fight for their rights. After about twenty minutes of liste Feiner, the crowd became somewhat restless and there was some shoving, pushi milling around. There were two policemen at the scene, but they seemed more with the movement of traffic...than in Feiner's speech. But the crowd became restless. ...a man in the audience...told the policemen to get Feiner off t box or he would pull him off himself. Thereupon one of the officers asked F get down off the box so that the crowd could be dispersed but Feiner refused officer arrested him for disorderly conduct.

"Feiner was convicted in the local trial court and sentenced to thirty days i ment. After the conviction was sustained by...the highest state court, Fein his case to the Supreme Court. ...

"MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

"...Petitioner was accorded a full, fair trial. The trial judge heard testim and contradicting the judgment of the police officers that a clear danger of threatened. After weighing this contradictory evidence, the trial judge reac sion that the police officers were justified in taking action to prevent a b ...The courts below recognized petitioner's right to hold a street meeting a locality, to make use of loud-speaking equipment in giving his speech, and t tory remarks concerning public officials and the American Legion. They foun officers in making the arrest were motivated solely by a proper concern for tion of order and protection of the general welfare and that there was no ev could lend color to a claim that the acts of the police were a cover for sup petitioner's views and opinions. Petitioner was thus neither arrested nor c the making or the content of his speech.

*Direct quotations from statutes are indicated by the use of quotation marks. Other summaries or paraphrases of the statute listed.

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..Petitioner was accorded a full, fair trial. The trial judge heard testimony supporting nd contradicting the judgment of the police officers that a clear danger of disorder was hreatened. After weighing this contradictory evidence, the trial judge reached the conclu-ion that the police officers were justified in taking action to prevent a breach of peace. ..The courts below recognized petitioner's right to hold a street meeting at this ocality, to make use of loud-speaking equipment in giving his speech, and to make deroga-ory remarks concerning public officials and the American Legion. They found that the fficers in making the arrest were motivated solely by a proper concern for the preserva-ion of order and protection of the general welfare and that there was no evidence which ould lend color to a claim that the acts of the police were a cover for suppression of etitioner's views and opinions. Petitioner was thus neither arrested nor convicted for he making or the content of his speech.

otations from statutes are indicated by the use of quotation marks. Other statements are or paraphrases of the statute listed.

"...The findings of the state courts as to the existing situation and the imminen of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of f speech. ..."

Tinker vs. DesMoines School District, vol. 393 U.S. Reports, p. 503 (1969)

"Mr. Justice Fortas delivered the opinion of the Court. Petitioner John F. Tinke 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

"In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

"The principals of the Des Moines schools became aware of the plan to wear armban On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be sus until he returned without the armband. Petitioners were aware of the regulatior the school authorities adopted.

"On December 16, Mary Beth and Christopher wore black armbands to their schools. Tinker wore his armband the next day. They were all sent home and suspended fr school until they would come back without their armbands. They did not return t until after the planned period for wearing armbands had expired—that is, until New Year's Day.

"The complaint was filed in the United States District Court by petitioners, thr their fathers, under § 1983 of Title 42 of the United States Code. It prayed f injunction restraining the respondent school officials and the respondent membe of the board of directors of the school district from disciplining the petitio and it sought nominal damages.

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"The school officials banned and sought to punish petitioners for a silent, passiv
expression of opinion, unaccompanied by any disorder or disturbance on the part o
petitioners. There is here no evidence whatever of petitioner's interference, ac
or nascent, with the schools' work or of collision with the rights of other stude
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"Only a few of the 18,000 students in the school system wore the black armbands.
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of the schools or any class was disrupted. Outside the classrooms, a few student
hostile remarks to the children wearing armbands, but there were no threats or ac
violence on school premises. ...

"The principle of these cases is not confined to the supervised and ordained discu
which takes place in the classroom. The principal use to which the schools are d
is to accommodate students during prescribed hours for the purpose of certain typ
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This is not only an inevitable part of the process of attending school; it is als
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versial subjects like the conflict in Vietnam, if he does so without 'materially
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tion of the school' and without colliding with the rights of others...

"As we have discussed, the record does not demonstrate any facts which might reaso
have led school authorities to forecast substantial disruption of or material int
ference with school activities, and no disturbances or disorders on the school pr
in fact occurred. These petitioners merely went about their ordained rounds in s
Their deviation consisted only in wearing on their sleeve a band of black cloth,
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their example, to influence others to adopt them. They neither interrupted schoo
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The case of Tinker vs. DesMoines School District can also be found in the followin

Cohen, et. al. *Bill of Rights: a sourcebook.* pp. 232-233.

Parker, et. al. *Civil liberties: case studies and the law.* p. 178.

Some students might be interested in comparing Edwards vs. South Carolina (1963) w
Adderly vs. Florida (1966). Sources:

Oregon State Bar Association. *Freedom of the press.* pp. 4-9.

Cohen, et. al. *The Bill of Rights: a sourcebook.* pp. 235-236.

Bragdon and Pittenger. *The pursuit of justice.* pp. 45-48 and 159.

Quigley and Longaker. *Conflict, politics and freedom.* pp. 59-60.

Kovacs vs. Cooper, vol. 336 U.S. Reports p. 77 (1949)

Challenge on free expression grounds to an ordinance prohibiting use of sound tr
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Gregory vs. Chicago, vol. 394 U.S. Reports, p. 111 (1969)

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in peaceful expression of dissent should prevail in these circumstances.

Terry vs. Ohio, vol. 392 U.S. Reports, p. 1 (1968)

[Testimony included in the report of the Supreme Court decision]

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eland at approximately 2:30 in the afternoon of October 31, 1963, his attention was

attracted by two men, Chilton and Terry, standing on the corner of Huron Road ar
Euclid Avenue. He had never seen the two men before, and he was unable to say p
cisely what first drew his eye to them. However, he testified that he had been
policeman for 39 years and a detective for 35 and that he had been assigned to p
this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years
He explained that he had developed routine habits of observation over the years
and that he would 'stand and watch people or walk and watch people at many inter
of the day.' He added: 'Now, in this case when I looked over they didn't look
to me at the time.'

"...He saw one of the men leave the other one and walk southwest on Huron Road, p
some stores. The man paused for a moment and looked in a store window, then wa
on a short distance, turned around and walked back toward the corner, pausing or
again to look in the same store window. He rejoined his companion at the corner
the two conferred briefly. Then the second man went through the same series of
strolling down Huron Road, looking in the same window, walking on a short distan
turning back, peering in the store window again, and returning to confer with th
first man at the corner. The two men repeated this ritual alternately between
and six times apiece—in all, roughly a dozen trips. At one point, while the tw
were standing together on the corner, a third man approached them and engaged th
briefly in conversation. This man then left the two others and walked west on E
Avenue. Chilton and Terry resumed their measured pacing, peering and conferrin
After this had gone on for 10 to 12 minutes, the two men walked off together, h
west on Euclid Avenue, following the path taken earlier by the third man.

"By this time Officer McFadden had become thoroughly suspicious. He testified t
he suspected the two men of 'casing a job, a stick-up,' and that he considered
duty as a police officer to investigate further. He added that he feared 'they
have a gun.' Thus, Officer McFadden followed Chilton and Terry and saw them st
front of Zucker's store to talk to the same man who had conferred with them ear
on the street corner. Deciding that the situation was ripe for direct action,
McFadden approached the three men, identified himself as a police officer and a
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so that they were facing the other two, with Terry between McFadden and the othe
and patted down the outside of his clothing. In the left breast pocket of Terry
overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket,
was unable to remove the gun. At this point, keeping Terry between himself and
others, the officer ordered all three men to enter Zucker's store. As they went
he removed Terry's overcoat completely, removed a .38-caliber revolver from the p
and ordered all three men to face the wall with their hands raised. Officer McF
proceeded to pat down the outer clothing of Chilton and the third man, Katz. He
discovered another revolver in the outer pocket of Chilton's overcoat, but no we
were found on Katz. The officer testified that he only patted the men down to s
whether they had weapons, and that he did not put his hands beneath the outer ga
of either Terry or Chilton until he felt their guns. So far as appears from the
he never placed his hands beneath Katz' outer garments. Officer McFadden seized
gun, asked the proprietor of the store to call a police wagon, and took all thre
to the station, where Chilton* and Terry were formally charged with carrying con
weapons. ...

"...this question thrusts to the fore difficult and troublesome issues regarding
sensitive area of police activity—...the practical and constitutional arguments
over the power of the police to 'stop and frisk' —...suspicious persons.

"[This section contains some of the arguments given by Chief Justice Warren for h
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"On the one hand, it is frequently argued that in dealing with the rapidly unfold
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"In view of these facts, we cannot blind ourselves to the need for law enforcemen
to protect themselves and other prospective victims of violence in situations wh
may lack probable cause for an arrest. When an officer is justified in believin
individual whose suspicious behavior he is investigating at close range is arme
presently dangerous to the officer or to others, it would appear to be clearly
to deny the officer the power to take necessary measures to determine whether t
is in fact carrying a weapon and to neutralize the threat of physical harm.

"We must still consider, however, the nature and quality of the intrusion on ind
rights which must be accepted if police officers are to be conceded the right t
for weapons in situations where probable cause to arrest for crime is lacking.
limited search of the outer clothing for weapons constitutes a severe, though b
intrusion upon cherished personal security, and it must surely be an annoying,
and perhaps, humiliating experience. ...

"Our evaluation of the proper balance that has to be struck in this type of case
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for weapons for the protection of the police officer, where he has reason to be
he is dealing with an armed and dangerous individual, regardless of whether he
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that the individual is armed; the issue is whether a reasonably prudent man in
stances would be warranted in the belief that his safety or that of others was

"...We think on the facts and circumstances Officer McFadden detailed before the
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and thus presented a threat to the officer's safety while he was investigating
behavior. ...

"...Officer McFadden confined his search strictly to what was minimally necessary
whether the men were armed and to disarm them once he discovered the weapons.
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"We conclude that the revolver seized from Terry was properly admitted in eviden
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Berger vs. New York, vol. 388 U.S. Reports, p. 41 (1967)

Challenge to a conviction of conspiracy to bribe a city official on the ground t
evidence was improperly collected with an electronic wire tap device. Weighing
interest in "privacy of the home" against "a most important technique of law enf
ment," the Supreme Court decided in these circumstances an interest in privacy s
prevail, saying that electronic eavesdropping is "search and seizure" and thus s
to Fourth Amendment restrictions.

See also: Bassiouni et. al., *Crimes and justice.* pp. 63-64.

Miranda vs. Arizona, vol. 384 U.S. Reports, p. 436 (1966)

Challenge to a murder conviction because after the suspect was taken into police
custody and before questioning, he was not warned of his rights to silence and t
attorney. Weighing an interest in having people be aware of their rights in cri
prosecutions against an interest in gathering confession evidence to convict cri
the Supreme Court decided an interest in having people know their rights should

See also: Bassiouni et. al., *Crimes and justice.* pp. 48-53.

Oregon State Bar Association. *Privilege against self-incrimination.*

Tresolini, *These liberties.* pp. 46-60.

EBF. *Right to remain silent: the Miranda case.* (And Pamphlet)

Rideau vs. Louisiana, vol. 373 U.S. Reports, p. 723 (1963)

Challenge to conviction of robbery, kidnapping, and murder on grounds that judge
to move trial to another location after a local TV station broadcast an intervi
the suspect confessed to the charges. Weighing an interest in free disseminati
against an interest in having guilt decided at trial, the Supreme Court decided
in having guilt determined at trial should prevail in these circumstances. So a
given a change of venue.

Estes vs. Texas, vol. 381 U.S. Reports, p. 532 (1965)

Challenge to conviction of swindling on grounds that TV coverage at the trial p
the accused. Weighing the interest in the public being informed of what occurs

. New York, vol. 388 U.S. Reports, p. 41 (1967)

ge to a conviction of conspiracy to bribe a city official on the ground that key
e was improperly collected with an electronic wire tap device. Weighing an
t in "privacy of the home" against "a most important technique of law enforce-
the Supreme Court decided in these circumstances an interest in privacy should
, saying that electronic eavesdropping is "search and seizure" and thus subject
th Amendment restrictions.

o: Bassiouni et. al., *Crimes and justice*. pp. 63-64.

s. Arizona, vol. 384 U.S. Reports, p. 436 (1966)

ge to a murder conviction because after the suspect was taken into police
and before questioning, he was not warned of his rights to silence and to an
y. Weighing an interest in having people be aware of their rights in criminal
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so: Bassiouni et. al., *Crimes and justice*. pp. 48-53.

Oregon State Bar Association. *Privilege against self-incrimination*. pp. 8-12.

Tresolini, *These liberties*. pp. 46-60.

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against the actual unfairness that could be caused by the presence of a TV in courtroom, the Supreme Court decided an interest in fair trials should prevail these circumstances. Court decided that accused was not allowed due process. other reasons, TV was psychologically disturbing to jurors and judge. Note tha Federal court cases bar live TV coverage as do all but two states. Many pupil probably aware of this fact.

See also: Oregon State Bar Association. *Free press - fair trial.* pp. 13-14

Sheppard vs. Maxwell, vol. 384 U.S. Reports, p. 333 (1966)

Challenge to conviction of murder on grounds that extensive news coverage befo and during the trial implied to the public (including the jurors) that the sus was guilty and otherwise prejudiced his trial. Weighing an interest of subjec the judicial process to public scrutiny through an unrestrained press against interest in preventing impairment of jury impartiality, the Supreme Court deci an interest in fair trials should prevail in these circumstances.

See also: Bassiouni et al. *Crimes and justice.* pp. 54-56.

Oregon State Bar Association. *Free press - fair trial.* p. 4.

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Module 4

UNDERSTANDING II

THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPOR CERTAIN NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

A. *Explanation of Understanding II*

Law can be viewed as one kind of social control—a formal set of do's and don'ts together safer and easier. Of course, laws are only one kind of social control; familiar include custom, tradition, morality, and even the basic interest in self-preservation. So legal factors are stronger than the control of law, and law may be limited by the extent t consistent with these factors. For example, suppose that tomorrow cigarettes and alcohol list of dangerous drugs whose use is subject to serious penalty. Such a law would have to part against the grain of common custom and popular morality. And in all likelihood, lack such nonlegal factors would limit the effectiveness of legal prohibition.

B. *Teaching Understanding II*

OBJECTIVES

- Given a conflict situation, the student can identify the possible actions that ca analyze each alternative in terms of the moral principles involved, and suggest t most palatable to the public.
- Given a case in which the question of self-preservation is involved, the student the actions of each of the principal participants in terms of the values held by
- Given a hypothetical conflict situation in which he himself is involved, the stude application of the valuing process by explaining why a specific course of action sistent with his values.

QUESTIONS TO REACH UNDERSTANDING

- What nonlegal factors influence social interaction?
- How is the effectiveness or ineffectiveness of law influenced by nonlegal factors control?

II

CTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY
NONLEGAL FACTORS  SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

*of Understanding II*

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*erstanding II*

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tions of each of the principal participants in terms of the values held by those individuals.

hypothetical conflict situation in which he himself is involved, the student can demonstrate
tion of the valuing process by explaining why a specific course of action would be con-
with his values.

REACH UNDERSTANDING

nlegal factors influence social interaction?

the effectiveness or ineffectiveness of law influenced by nonlegal factors of social
?

Module 4

USE OF VISUALS

- Have students study the cartoons below and on page 132. Check understanding of the identification and analysis questions (for example: What is happening? - Why is th funny?) Then have groups of students attempt to write a law related to the situati by the cartoon. The class may then discuss the chances of these laws being obeyed.

## Children's Painti Competition—Numb

**A cartoon for coloring has been omitted here because of copyright restrictions. It i** **Punch Magazine, December 2, 1970.**

ts study the cartoons below and on page 132. Check understanding of the cartoons through ion and analysis questions (for example: What is happening? - Why is this situation en have groups of students attempt to write a law related to the situation depicted oon. The class may then discuss the chances of these laws being obeyed.

## Children's Painting Competition—Number One

**coloring has been omitted here because of copyright restrictions. It is from _e_, December 2, 1970.**

DETAILED DESCRIPTION OF STRATEGIES

1. Circumstances where law tries to operate against the grain of human interest in self-preservation.

a) Explain to pupils what the New York statutes defines regarding murder and justification for use of physical force. Then assign pupils the task of creating a short skit in which an individual must "kill or be killed."

b) A discussion of the following sample cases should prove quite interesting to the pupils. In all three cases, the accused were faced with the task of killing in order to survive. During discussion, ask pupils what their reactions might have been under the same circumstances. (See page 160.)

- Regina vs. Dudley and Stephens, Law Reports, vol. 14, Queens Bench Division 1884 (English)
- United States vs. Holmes, in Federal Cases, Book 26 (cases 15, 244 to 15,819) p. 360 (1842)
- "The Case of the Speluncean Explorers" by L. Fuller, in vol. 62 Harvard Law Review, p. 616 (1949)

DISCUSSION OF STRATEGIES AND RESOU

Law may be viewed as a social cont
only social influence at work in s
rules of law may be limited by the
they are consistent with or suppor
forces. Law may be most effective
to these nonlegal forces.

Perhaps the strongest of nonlegal
influencing social interaction is
self-preservation. We have hundre
lations aimed at helping people tr
in safety. But each driver's inte
preservation is the strongest infl
driving. The traffic regulation t
to be ignored is the one that the
to be unnecessary to his own safet
Thus, the law is limited by the ex
against one's concern for self-pre

The most dramatic example of this
of self-defense. The law punishir
tended to discourage those who mig
law almost universally makes an ex
another in self-defense. Because
is such a strong instinct, a legal
it very difficult to enforce a law
killing in self-defense.

The three remaining resources unde
present cases where people were p
where the choice was between kill
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uller, in vol. 62 Harvard Law
p. 616 (1949)

Law may be viewed as a social control. Law is not only social influence at work in society, and formal rules of law may be limited by the extent to which they are consistent with or supported by nonlegal forces. Law may be most effective when it conforms to these nonlegal forces.

Perhaps the strongest of nonlegal forces at work in influencing social interaction is the interest in self-preservation. We have hundreds of legal regulations aimed at helping people travel our highways in safety. But each driver's interest in self-preservation is the strongest influence on safe driving. The traffic regulation that is most likely to be ignored is the one that the driver perceives to be unnecessary to his own safety and well-being. Thus, the law is limited by the extent it goes against one's concern for self-preservation.

The most dramatic example of this may be the matter of self-defense. The law punishing murder is intended to discourage those who might kill. But this law almost universally makes an exception for killing another in self-defense. Because self-preservation is such a strong instinct, a legal system would find it very difficult to enforce a law which prohibits killing in self-defense.

The three remaining resources under subsection 1 present cases where people were placed in situations where the choice was between killing another or dying themselves. In each case,the limits of law's power

2. An actual occurrence in American legal history where law has lacked "public support" or operated without the backing of "public morality."

a) Have pupils look up specific details of the 18th and 21st amendments to the Federal Constitution. Assign pupils to read in depth concerning the effectiveness of the Prohibition law. In their reports, pupils should be able to relate some of the unorthodox happenings such as bootlegging, "bath-tub gin," speakeasies—generally, the overall increase in criminal activities. The excerpt on page 160 from "Alcoholic Beverage Control Before Repeal" by Clark Byse might be a fitting introduction to this topic.

b) Have pupils make use of Readers Guide to Periodical Literature and American history texts to look up the landmark Supreme Court cases dealing with segregation and integration—Plessy vs. Ferguson, Brown vs. Board of Education of Topeka, Kansas, and Holmes vs. Alexander. Other pupils might investigate how much followup there has actually been in the Southern school systems to carry out the court's orders to integrate and grant to all citizens equal protection under the law guaranteed by the 14th amendment to the United States Constitution.

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in self-preservation. In each case,
struggled with applying the law to su

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result—massive numbers of "repectabl
officials disregarded the law with im

Some of the most controversial interp
the U.S. Constitution of the Warren C
confronted the same limitation of law
Board of Education, in 1954, determin
equal protection clause of the U.S. C
forbids segregation of school childre
Nevertheless, more than a decade and
that case was decided, more than half
children in America attend predominat
schools. Lack of popular and moral s
large portion of our population in im
requirements set forth in Brown proba
explain the relative ineffectiveness

## ON OF STRATEGIES

## DISCUSSION OF STRATEGIES AND RESOURCES

to discourage killing were surpassed by the interest in self-preservation. In each case, the courts struggled with applying the law to such circumstances.

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tection under the law guaranteed
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nstitution.

An interest in self-preservation is not the only nonlegal force that may serve as a limit to the effectiveness of law. To the extent that law goes against the grain of popular morality, custom, or tradition, it may be of limited effect. The prohibition era of the 1920's provides a clear example in American history. The social problems of alcohol abuse were met with comprehensive prohibitions of manufacture and sale of alcohol. Yet drinking was largely morally condoned and socially accepted. The result—massive numbers of "repectable" citizens and officials disregarded the law with impunity.

Some of the most controversial interpretations of the U.S. Constitution of the Warren Court era have confronted the same limitation of law. *Brown vs. Board of Education*, in 1954, determined that the equal protection clause of the U.S. Constitution forbids segregation of school children by races. Nevertheless, more than a decade and a half after that case was decided, more than half of the black children in America attend predominately segregated schools. Lack of popular and moral support of a large portion of our population in implementing the requirements set forth in *Brown* probably helps explain the relative ineffectiveness of this law.

## DETAILED DESCRIPTION OF STRATEGIES

c) The statement on page 160 was contained on an envelope mailed within a regular envelope. The statute related to this type of mailing is listed below the message.

- —Have each student write anonymously his or her probable action if he received such an envelope in the mail.
- —Have the class discuss what they perceive as the intent of the statute; they can then add to their perceptions any additional ideas from the introductory statements on page 161.
- —Compare the anonymous statements with the class decision concerning the intent of the statute. Is the law effective in bringing out the desired change of behavior?
- —Suggest ways that the desired changes could be brought about by societal action.

d) As an introduction to the topic of religious exercises in the public school system, the teacher might poll the class to see how many pupils have attended schools where religious exercises were part of the daily procedure. The question might then be asked: Why is this subject so controversial and what legal action if any, has been initiated about religious services in public schools? This would be a natural point to study the case of Bible Reading and Prayers in Public Schools. (See page 165 for references.)

## DISCUSSION OF STRATEGIES AND RESOUR

The school prayer cases reveal a si
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## DISCUSSION OF STRATEGIES AND RESOURCES

The school prayer cases reveal a similar limit of law In the 1950's and early 1960's the Supreme Court interpreted the First Amendment as prohibiting any religious exercise in public schools. These decisions were inconsistent with the personal conviction concerning the proper relation between religion and education of large numbers of citizens and education officials. The result has been that religious practices have remained unchanged in thousands of public schools, notwithstanding their illegality.

DETAILED DESCRIPTION OF STRATEGIES

e) Have pupils view a film or filmstrip on the school prayer controversy. The following titles are possibilities:

- "The Schempp Case: Bible Reading in Public Schools." Color No. 2858; B/W No. 2859. Encyclopedia Britannica Film Division.
- "Bill of Rights in Action: Freedom of Religion." 21 min., color, BFA.

f) A recent United States Vice President, Hubert Humphrey made the following statement: "There are not enough jails, not enough policemen and not enough courts to enforce a law not supported by the people." Divide the class in half. Have one half devise arguments to support this statement, the other half to devise reasons why they might disagree with the Vice President's statement.

DISCUSSION OF STRATEGIES AND RESOURCES

# RESOURCES*

## New York Statutes

New York Penal Law, Section 125.25 "Murder."

"A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death o person or of a third person; ...

   [Exceptions]

   (a) The defendant acted under the influence of extreme emotional dis for which there was a reasonable explanation or excuse, the reaso of which is to be determined from the viewpoint of a person in t defendant's situation under the circumstances as the defendant b them to be. ...or

   (b) The defendant's conduct consisted of causing or aiding, without of duress or deception, another person to commit suicide.

2. Under circumstances evincing a depraved indifference to human life, he engages in conduct which creates a grave risk of death to another perso thereby causes the death of another person; or

3. Acting either alone or with one or more other persons, he commits or at commit robbery, burglary, kidnapping, arson, rape in the first degree, the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, h participant, if there be any, causes the death of a person other than o participants; ...

   [Exceptions]

   (a) [The defendant] did not commit the homicidal act or in any way request, command, importune, cause or aid the commission thereo

   (b) Was not armed with a deadly weapon, or any instrument, article readily capable of causing death or serious physical injury and not ordinarily carried in public places by law-abiding persons;

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*Direct quotations from statutes are indicated by the use of quotation marks. Othe are summaries or paraphrases of the statute listed.

# RESOURCES*

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[Exceptions]

(a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. ...or

(b) The defendant's conduct consisted of causing or aiding. without the use of duress or deception, another person to commit suicide.

Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or

Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; ...

[Exceptions]

(a) [The defendant] did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

---

ations from statutes are indicated by the use of quotation marks. Other statements es or paraphrases of the statute listed.

(c) Had no reasonable ground to believe that any other participant wa with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant in to engage in conduct likely to result in death or serious physica

New York Penal Law, Section 35.15 "Justification: Use of Physical Force in Defe

"1. Except as provided in subdivisions two and three of this section, a person in using physical force upon another person in order to defend himself or son from what he reasonable believes to be the use of imminent use of unla force by such other person, and he may use a degree of force which he reas is necessary for such purpose; except that deadly physical force may not b the actor reasonably believes that such other person is (a) using or about lawful deadly physical force, or (b) using or about to use physical force occupant of a dwelling while committing or attempting to commit a burglary dwelling, or (c) committing or about to commit a kidnapping, robbery, forc or forcible sodomy.

"2. Notwithstanding the provisions of subdivision one of this section, a perso justified in using deadly physical force upon another person if he knows t avoid the necessity of using such force with complete safety (a) by retrea (b) by surrendering possession of property to a person asserting a claim c thereto, or (c) by complying with a demand that he abstain from performing which he is not obligated to perform.

"3. Notwithstanding the provisions of subdivision one of this section, a perso justified in using physical force if (a) with intent to cause physical inj death to another person, he provoked the use of unlawful physical force by person, or (b) he was the initial agressor,...or (c) the physical force ir the product of a combat by agreement not specifically authorized by law."

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury."

**ork Penal Law, Section 35.15 "Justification: Use of Physical Force in Defense of a Person."**

Except as provided in subdivisions two and three of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonable believes to be the use of imminent use of unlawful physical force by such other person, and he may use a degree of force which he reasonably believes is necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (a) using or about to use unlawful deadly physical force, or (b) using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling, or (c) committing or about to commit a kidnapping, robbery, forcible rape or forcible sodomy.

Notwithstanding the provisions of subdivision one of this section, a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (a) by retreating,...or (b) by surrendering possession of property to a person asserting a claim of right thereto, or (c) by complying with a demand that he abstain from performing an act which he is not obligated to perform.

Notwithstanding the provisions of subdivision one of this section, a person is not justified in using physical force if (a) with intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person, or (b) he was the initial agressor,...or (c) the physical force involved was the product of a combat by agreement not specifically authorized by law."

## Sample Cases

Regina vs. Dudley and Stephens, Law Reports vol. 14, Queens Bench Division 1884 (E (reproduced in edited form in Howard and Summers, Law, Its Nature, Functions and p. 238; reproduced in Kadish and Paulsen, Criminal Law and Its Processes, p. 67.

Four men were lost at sea in a lifeboat for more than 3 weeks. In order to pr vent all from dying of starvation, the weakest, an 18-year-old boy with no fam killed and eaten. This case is the report of the murder prosecution that foll rescue of the remaining three men. Only two of the men were tried; the other not gone along with their plan. The final sentence was the death penalty.

United States vs. Holmes, in Federal Cases, Book 26 (cases 15, 244 to 15,819), p.

After shipwreck, 42 people were at sea in a lifeboat. After 2 days when the sea rough, a seaman threw 14 passengers overboard to keep the lifeboat from sinking case is the prosecution of the seaman for manslaughter.

"The Case of the Speluncean Explorers" by Fuller, L., in vol. 62 Harvard Law Revi p. 616 (1949)

Hypothetical story of five men lost in a cave for 30 days without food. Lots cast and the loser was eaten. Case presents the murder prosecution of the ot

Alcoholic Beverage Control Before Repeal. Clark Byse. 7 Law and Contemporary Pr (1940) pp. 544-566. Reprinted by permission of Fred B. Rothman & Co., South Hac

"Many factors help to explain the adoption of the Amendment. Public opinion w foundly disturbed by the evils of the saloon...and the corrupt alliance betwe and politics. In addition to these two major causes, there was the argument enforcing prohibition the productivity of the nation would be enlarged, becau would be more efficient and the money theretofore spent for liquor would be i in more productive enterprises. Business interests, convinced that sober emp would result from the adoption of national prohibition, supported the dry cru was also urged that wages would be increased and that standards of living be e Cases

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as also urged that wages would be increased and that standards of living be raised. ...

"All these factors were skillfully exploited by the driving force against li
Anti-Saloon League... The result was the Eighteenth Amendment to the Const
which prohibited the manufacture, sale, or transportation of intoxicating l
The unfortunate results of this attempt at legal coercion are well known.
was replaced by the speak-easy which served adults and minors with impartia
Instead of being able to secure liquor made by an experienced distiller wit
or local reputation, the average consumer was forced to accept 'bath tub' g
that had been 'cut,' colored and flavored to resemble whisky. Bootleggers
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corrupted local, state, and national officials. Thus the unholy alliance b
and politics, one of the causes of Prohibition, returned in an aggravated f
political protection assured, the bootlegging element branched out into oth
activities, particularly into the fields of racketeering and gambling.

"Law enforcement agencies failed to cope with the problem successfully. Many
explain this failure. Congress refused to establish an adequate enforcemen
It voted dry, but apparently was quite wet when it came to giving the Prohi
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its citizenry. There is a limit to effective federal action. This weakness
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with the Federal Government in its attempt to enforce the law. In no one ye
combined enforcement appropriations of the states equal one million dollars
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violators could plead guilty and be assured of a light fine or suspended se

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Constitutional command not to indulge in even a glass of mildly euphoric be
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in the Amendment, there arose a general disregard for law and order. It is
here that Prohibition caused the most havoc, for law and order, respect for

All these factors were skillfully exploited by the driving force against liquor, the Anti-Saloon League... The result was the Eighteenth Amendment to the Constitution which prohibited the manufacture, sale, or transportation of intoxicating liquors. The unfortunate results of this attempt at legal coercion are well known. The saloon was replaced by the speak-easy which served adults and minors with impartiality. Instead of being able to secure liquor made by an experienced distiller with a national or local reputation, the average consumer was forced to accept 'bath tub' gin or alcohol that had been 'cut,' colored and flavored to resemble whisky. Bootleggers did a thriving business, charged high prices, paid their taxes in the form of protection money and corrupted local, state, and national officials. Thus the unholy alliance between liquor and politics, one of the causes of Prohibition, returned in an aggravated form. With political protection assured, the bootlegging element branched out into other criminal activities, particularly into the fields of racketeering and gambling.

Law enforcement agencies failed to cope with the problem successfully. Many factors explain this failure. Congress refused to establish an adequate enforcement agency. It voted dry, but apparently was quite wet when it came to giving the Prohibition Bureau adequate appropriations. Even with decent appropriations, it would have been well-nigh impossible for the Federal Government to police the liquor activities of its citizenry. There is a limit to effective federal action. This weakness might possibly have been remedied by state assistance, but the states refused to cooperate with the Federal Government in its attempt to enforce the law. In no one year did the combined enforcement appropriations of the states equal one million dollars. Courts, bogged down with a flood of liquor prosecutions, held 'bargain days' on which alleged violators could plead guilty and be assured of a light fine or suspended sentence.

The most important reasons for the failure in enforcement is found in the attitude of the public. Indeed, this attitude probably explains why state and federal governments failed to establish adequate enforcement agencies. People resented being ordered by a Constitutional command not to indulge in even a glass of mildly euphoric beer. They objected to the disregard of the law by the wealthy who were able and willing to pay high prices in order to keep a well-stocked cellar. Law enforcement officials often used crude methods that stirred up opposition to national prohibition and made effective enforcement practically impossible. With the breakdown in law enforcement and the widespread violation of the laws that had been enacted pursuant to the power granted in the Amendment, there arose a general disregard for law and order. It is precisely here that Prohibition caused the most havoc, for law and order, respect for authority

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"Such a situation could not long endure. ... Prominent leaders who had thereto
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A Literary Digest poll in 1930 indicated that the Amendment was very unpopular
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provide the necessary impetus for economic recovery. Federal and state govern
their budgets unbalanced for relief expenditures and decreased tax returns, lo
anxiously for new sources of revenue. Eventually these forces became sufficie
and on December 5, 1933, Utah, the thirty-sixth state, ratified the Twenty-fir
Amendment."

This envelope contains a "Sexually Oriented Ad". Please read this notice carefully before opening.

The advertisement enclosed in this envelope contains photographic illustr
tions of nude men and women together in what may be considered erotic situa
tions and includes pertinent text.

I do not want to offend anyone not interested in sexually oriented litera
If you are not over 21 years of age or if you are not interested in seeing
ually oriented material please destroy this envelope without opening and yo
will receive no further advertising from this company.

You will receive my future offerings only if you specifically request the
mailed to you--otherwise you will receive no further advertisements.

Thank you.

(Signature of Publisher)

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Thank you.

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Pent-R-Books, Inc. vs. United States Postal Service. 328 Federal Supplement. (1

"*The Legislative Findings and the Statute*

The Congressional findings which support the Goldwater amendment are containe
Section 14 of Pub.L. 91-375, which reads:

INVASION OF PRIVACY BY MAILING OF SEXUALLY ORIENTED ADVERTISEMENTS

SEC. 14. (a) The Congress finds—

(1) that the United States mails are being used for the indiscriminate dissem
of advertising matter so designed and so presented as to exploit sexual se
alism for commercial gain;

(2) that such matter is profoundly shocking and offensive to many persons wh
it, unsolicited, through the mails;

(3) that such use of the mails constitutes a serious threat to the dignity an
of the American home and subjects many persons to an unconscionable and u
intrusion upon their fundamental personal right to privacy;

(4) that such use of the mail reduces the ability of responsible parents to p
their minor children from exposure to material which they as parents belie
harmful to the normal and healthy ethical, mental, and social development
children; and

(5) that the traffic in such offensive advertisements is so large that indivi
citizens will be helpless to protect their privacy or their families with
stronger and more effective Federal controls over the mailing of such mat

(b) On the basis of such findings, the Congress determines that it is con
to the public policy of the United States for the facilities and serv
of the United States Postal Service to be used for the distribution o
materials to persons who do not want their privacy invaded in this ma
or to persons who wish to protect their minor children from exposure
such material.

s, Inc. vs. United States Postal Service. 328 Federal Supplement. (1971)

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On the basis of such findings, the Congress determines that it is contrary
to the public policy of the United States for the facilities and services
of the United States Postal Service to be used for the distribution of such
materials to persons who do not want their privacy invaded in this manner
or to persons who wish to protect their minor children from exposure to
such material.

Module 4

The basic statutory provision is contained in 39 U.S.C. § 3010, which reads:

> (a) Any person who mails or causes to be mailed any sexually oriented adverti
> shall place on the envelope or cover thereof his name and address as the
> thereof and such mark or notice as the Postal Service may prescribe. ...

Criminal prosecution for violations of the Goldwater amendment is authorized in
18 U.S.C. §§ 1735 and 1737, which are also part of Pub.L. 91-375, and which re

> § 1735. Sexually oriented advertisements
>
> (a) Whoever—
>
> (1) willfully uses the mails for the mailing, carriage in the mails, or d
> of any sexually oriented advertisement in violation of section 3010 o
> or willfully violates any regulations of the Board of Governors issue
> such sections; or
>
> (2) sells, leases, rents, lends, exchanges, or licenses the use of, or,
> the purpose expressly authorized by section 3010 of title 39, uses a
> list maintained by the Board of Governors under such section;
>
> shall be fined not more than $5,000 or imprisoned not more than five yea
> both, for the first offense, and shall be fined not more than $10,000 or
> not more than ten years, or both, for any second or subsequent offense.

Post Office Department. Section 3010 (a) of Title 39, United States Code. [Rev

"(1) Any person who mails or causes to be mailed any sexually oriented adverti
shall place in the upper left-hand corner of the exterior face of the mail pie
whereon appear the address designation and postmarks, postage stamps, or indic
thereof, the sender's name and address. In the right-hand portion below the p
stamp, or indicia thereof, and above the addressee designation, there shall be
'Sexually Oriented Ad'. The words 'Sexually Oriented Ad,' however, need not b
on the exterior envelope or cover of a mail piece containing such an advertise
if the contents of the mail piece are enclosed in a sealed envelope, inside th
envelope or cover which sealed envelope bears conspicuously the words 'Sexuall
Ad.'"

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35. Sexually oriented advertisements

) Whoever—

(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such sections; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section;

shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense. ..."

**Office Department. Section 3010 (a) of Title 39, United States Code. [Revision]**

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"

Module 4

Resources Concerning Bible Reading and Prayer in Public Schools

National Council for the Social Studies. *Judgment: case study #1, bible readi prayer in public schools.* (Also printed in Social Education, vol. 29, #6, Oc pp. 361-372.)

Bragdon and Pittenger. *The pursuit of justice.* pp. 23-28.

James, *The supreme court in American life.* pp. 146-156.

Cohen, et. al. *The Bill of Rights: a source book.* pp. 284-289.

Mill, *Liberty and law.* pp. 138-151.

Parker, et. al. *Civil liberties.* pp. 143-145.

Oregon State Bar Association. *Liberty and the law.* Unit 7, Church, State, an

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* "The limits of law." Ginn and Company. 1973.

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UNDERSTANDING III

SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW SOME OVERT BEHAVIOR OR ACTIVITY TO REGULATE.

## A. *Explanation of Understanding III*

Perhaps the quality of life in our society would be improved if everyone belie principles of the Ten Commandments. Some social problems would be solved if all husban and vice versa. Harm done by criminal activity might be reduced if criminals were puni thoughts before such thoughts had a chance to take the form of antisocial activity. So requiring all spouses to love each other, and requiring people to think good thoughts? regulation would somehow go beyond the effective limits of law. Legal officials may tr purposes of controlling beliefs, emotions, thoughts, and the like. However, such regul without the restriction of some tangible conduct, activity, or behavior is generally be powers.

## B. *Teaching Understanding III*

OBJECTIVES

- The student can demonstrate his understanding of overt activities that can be by collecting 10 examples from articles in newspapers or magazines.
- Given an incident in which an individual is penalized for alleged hostile thou authorities; the student can list several positive and negative results of such propose hypotheses concerning the long-run weaknesses of such a policy.

QUESTIONS TO REACH UNDERSTANDING

- What factors limit the capacity of law to regulate what goes on in the minds o
- Even if law could regulate intangibles such as thoughts and beliefs, how might than good?
- Why is law less limited in regulating overt activity than in regulating intang thoughts and beliefs?

II

CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY
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*Understanding III*

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ypotheses concerning the long-run weaknesses of such a policy.

EACH UNDERSTANDING

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law could regulate intangibles such as thoughts and beliefs, how might this do more harm
d?

aw less limited in regulating overt activity than in regulating intangibles such as
and beliefs?

Module 4

## USE OF VISUALS

- Have students find pictures in newspapers and periodicals of overt situations
by law.
- Use a film of a totalitarian government in action (pre-World War II Germany or
Have students identify situations in which individuals fear that they may be p
or opinions. What visual clues reveal this?
(Many commercial films such as *The Shop on Main Street* can be used in this con

nts find pictures in newspapers and periodicals of overt situations which can be limited

of a totalitarian government in action (pre-World War II Germany or Italy, for example).
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ercial films such as *The Shop on Main Street* can be used in this context.)

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESC

## 1. Rules regulating intangibles.

a) Ask pupils if it is possible to control what people think, feel, or believe. Assign each pupil the task of designing and later revealing to the class a law which might control one of the emotions listed below. Read them the following hypothetical statutes before they begin their task. (It would be interesting to hear the reactions of their classmates about the feasibility of each statute.)

Sample hypothetical statutes:

—It shall be a crime punishable by a fine of not more than $500 and imprisonment for not more than a year for any person over 12 years of age to believe in discrimination on the basis of race, creed, or national origin.

—It shall be a crime...for a husband not to love his wife or wife not to love her husband.

b) A teacher will most likely receive an affirmative response to the question of whether the attitudes of students, teachers, and administrators within a school need to be changed. Suggest to pupils that the possibility exists of certain legislation being devised

Many of the difficulties we conf
society have more to do with att
than with antisocial activity.
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DISCUSSION OF STRATEGIES AND RESOURCES

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tain legislation being devised

Many of the difficulties we confront in our complex society have more to do with attitudes of people than with antisocial activity. Problems of racial tension may defy resolution until people more widely respect human dignity. Problems of widespread crime probably will not be overcome until more people feel morally compelled to respect other persons and their property. Some aspects of the problem of poverty may remain insolvable in the traditional framework of our society until more people commit themselves to the bonds that tie the family together.

Why not simply bring about these changes in people by law? Pass a law saying—"You must respect your fellow man," "You must believe it is wrong to steal," You must love your spouse and children." Obviously, such legislation would be an attempt to operate beyond the limits of law. Law which attempts to coerce beliefs is limited in *two* senses. For one thing, such laws go beyond the practical boundaries of legal control. Given our limited capacity to view and control man's minds, such laws would be virtually unenforceable. The *effectiveness* of these laws is bound to be limited.

Even if we assume that an Orwellian surveillance of men's thoughts, feelings, and beliefs is possible, such laws might still be beyond law's proper limits in another sense. In any legal system where individual dignity is a fundamental value, the realm of individual thought, feeling, and belief may not be

## DETAILED DESCRIPTION OF STRATEGIES

to change attitudes in the following areas:

Sample hypothetical school rules:

- —Design a school rule that will help foster trust between teachers and students.
- —Design a school rule that will reduce racial prejudice among people at the school.
- —Design a school rule that will encourage students, teachers, and administrators to respect the rights of others in the school.

Ask pupils after they have devised these rules why there might be problems in enforcing such rules. The reasons cited should be listed on bulletin board or poster for reference in the ensuing study.

## DISCUSSION OF STRATEGIES AND RESO

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legal coercion in such matters ma
social harm than good.

Having small groups of students a
construct some laws or rules deal
of human feelings or beliefs may
how limited law is in controlling

2. The more overt the things prescribed the less limited law is in regulating.

a) Construct a case study on the use of law to regulate and promote patriotism.

- —Construct a hypothetical statute that requires all school children to respect their country and its flag.
- —Adapt for student reading a case where students challenged in court a law requiring all students to take a pledge of allegiance to the nation's flag.

As thoughts or beliefs manifest t
antisocial activity, they enter
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DISCUSSION OF STRATEGIES AND RESOURCES

an appropriate realm for law's intrusion. Direct legal coercion in such matters may result in more social harm than good.

Having small groups of students actually try to construct some laws or rules dealing with regulation of human feelings or beliefs may dramatically reveal how limited law is in controlling peoples' minds.

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As thoughts or beliefs manifest themselves in overt antisocial activity, they enter the appropriate sphere of legal regulation. For example, few would argue that a law requiring citizens to believe in the flag would be either enforceable or proper. A law punishing children's refusal to salute the flag is easily enforced, but raises difficult questions as to propriety. In several cases, the courts have struggled with these laws which condemn refusal to act in an expression of belief. On the other hand,

## DETAILED DESCRIPTION OF STRATEGIES

b) Consider with pupils the following three court cases that examine the controversy as to whether students must be required to say the pledge of allegiance to the U.S. flag. Do pupils agree with the court's rulings?

References given on page 172.

—*West Virginia Board of Education vs. Barnett*, vol. 319 *U.S. Reports*, p. 624 (1943)

—*Frain vs. Baron*, vol. 307 *Federal Supplement*, p. 766 (1969)

—*Sheldon vs. Fanin*, vol. 221 *Federal Supplement*, p. 766 (1963)

c) Does a person have a right to either say or commit destructive acts on the United States flag? Go over the actions of the individual in each of the following cases without revealing the court's decision. See if pupils can figure out the court's ruling in each case.

References given on page 173.

—*People vs. Radish*, vol. 26 *New York Reports*, Second Series, p. 114 (1970)

—*Street vs. New York,* vol. 394 *U.S.* Reports, p. 576 (1969)

d) Can a government control what a person thinks? Have one of the pupils in class find excerpts from George Orwell's "1984" which indicate efforts of the government

## DISCUSSION OF STRATEGIES AND RES

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## DISCUSSION OF STRATEGIES AND RESOURCES

laws prohibiting acts of destruction of the flag have presented easier questions. Here overt activity expressing an unpopular belief is at issue.

By tracing case studies of legal attempts to encourage a belief that is a legitimate concern for a legal system to foster (i.e., patriotism), students may see dramatic limitations of law's power to operate in this area. Legal attempts to prohibit what ideas can be taught in the classroom, as illustrated in the "Scopes monkey trial," provide yet another area where law may have some limits. The whole issue of legal censorship of books and films could be discussed if time permits.

to control the thought processes and make certain thoughts a crime. Pupils should then report their findings to the class and lead a class discussion defending or refuting the government's power or right to do this.

e) Have pupils view the film "Inherit the Wind." If this is unavailable, it might be easier to secure a copy of the play.

—John Scopes was charged with violating state law by teaching the theory of evolution in his high school biology class. Can laws like this one be effective? Do they regulate an overt activity?

f) Pupils can be assigned to do research into the background of Martin Luther King as a prelude to debating the following statement of his: "Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but, they can restrain the heartless."

## RESOURCES*

West Virginia Board of Education vs. Barnett, vol. 319 U.S. Reports, p. 624 (194

Many pupils who were Jehovah Witnesses in West Virginia were expelled from scho
they refused to say the Pledge of Allegiance. In accordance with West Virgini
pelled pupil was considered to be unlawfully absent and subject to proceedings
Parents could be prosecuted, and if adjudged guilty, could be fined $50 and jai
30 days. The court ruled that this was a violation of the pupil's rights unde
first and fourteenth amendment and further stated that compulsion to salute th
a permissible method of achieving national unity.

Frain vs. Baron, vol. 307 Federal Supplement, p. 27 (1969)

In several schools, students were given the choice of leaving the classroom or
in the flag salute. Civil rights actions against their respective schools we
students who refused to leave their school rooms or to participate. The schoo
maintained it was a threat to discipline and order. The students maintained t
standing outside the room was punishment for their exercise of constitutional
of the students would not say the pledge because he was an atheist and objecte
"under God." The other two pupils did not feel there was liberty and justice
America. The court ruled that pupils had a right to remain in the classroom, e
they did not participate.

Sheldon vs. Fanin, vol. 221 Federal Supplement, p. 766 (1963)

Pupils who were members of Jehovah's Witnesses were suspended from school for
because they refused to stand for the singing of the national anthem. The Uni
District Court ruled that this action of the school was a violation of the pup
under the first amendment guaranteeing freedom of religion. The board could n
these pupils from school unless their conduct was disorderly and materially di
conduct and discipline of the school.

Some of these can be found in the following sources:

Mills, *Liberty and law.* pp. 138-144.

*Direct quotations from statutes are indicated by the use of quotation marks. Other s
summaries or paraphrases of the statute listed.

## RESOURCES*

ginia Board of Education vs. Barnett, vol. 319 U.S. Reports, p. 624 (1943)

upils who were Jehovah Witnesses in West Virginia were expelled from school because efused to say the Pledge of Allegiance. In accordance with West Virginia law, the ex- pupil was considered to be unlawfully absent and subject to proceedings as a delinquent. s could be prosecuted, and if adjudged guilty, could be fined $50 and jailed for s. The court ruled that this was a violation of the pupil's rights under the and fourteenth amendment and further stated that compulsion to salute the flag is not issible method of achieving national unity.

. Baron, vol. 307 Federal Supplement, p. 27 (1969)

eral schools, students were given the choice of leaving the classroom or participating flag salute. Civil rights actions against their respective schools were brought by ts who refused to leave their school rooms or to participate. The school authorities ined it was a threat to discipline and order. The students maintained the idea of ng outside the room was punishment for their exercise of constitutional rights. One students would not say the pledge because he was an atheist and objected to the words God." The other two pupils did not feel there was liberty and justice for all in a. The court ruled that pupils had a right to remain in the classroom, even though id not participate.

vs. Fanin, vol. 221 Federal Supplement, p. 766 (1963)

who were members of Jehovah's Witnesses were suspended from school for insubordination e they refused to stand for the singing of the national anthem. The United States ct Court ruled that this action of the school was a violation of the pupils' rights the first amendment guaranteeing freedom of religion. The board could not exclude pupils from school unless their conduct was disorderly and materially disrupted the t and discipline of the school.

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*Liberty and law.* pp. 138-144.

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Module 4

Parker, et. al. *Civil liberties.* pp. 142-143.
Cohen, et. al. *The Bill of Rights.* p. 260.
James. *The Supreme Court in American life.* pp. 142-145.
Sandler, et. al. *The people make a nation.* pp. 172-173.

People vs. Radish, vol. 26, New York Reports, Second Series, p. 114 (1970)

(Affirmed by U.S. Supreme Court without opinion, March 24, 1971. Statute prohib
contemptuous acts against the flag determined to be constitutional.)

The defendant in this case was a proprietor of an art gallery who publicly dis
and exposed for sale a certain type of sculptures which had been made out of
flag as protests against the Vietnam War. He was found guilty of violating th
Law which states that the American flag cannot be defiled. The court ruled th
in no way violated the defendant's right to freedom of speech under the first
amendment.

Street vs. New York, vol. 394 U.S. Reports, p. 576 (1969)

(Statute prohibiting contemptuous words against the flag determined to be uncons

Upon hearing the news that James Meredith, the civil rights leader was shot,
an American flag that he owned and burned it on a street corner near his home
arrested and charged with malicious mischief for violating the New York Penal
states it is a crime to publicly mutilate the flag either by word or acts. H
heard to say to the arresting officer, "we don't need no damn flag if they le
happen to Meredith." The New York Court of Appeals ruled that they could not
his contention that he had the right under the first amendment to express his
this fashion. The court upheld the opinion that Street was guilty of a misde
gave him a suspended sentence. In the court's opinion, "One may not justify
house, even if it is his own, on the ground, however sincere, that he does so
One may not justify breaking the windows of a government building on that bas
does not exonerate lawlessness. And the prohibition against flag burning on
thoroughfare being valid, the misdemeanor is not excused because it is an act
protest."

r, et. al. *Civil liberties.* pp. 142-143.

, et. al. *The Bill of Rights.* p. 260.

. *The Supreme Court in American life.* pp. 142-145.

er, et. al. *The people make a nation.* pp. 172-173.

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may not justify breaking the windows of a government building on that basis. Protest
s not exonerate lawlessness. And the prohibition against flag burning on the public
roughfare being valid, the misdemeanor is not excused because it is an act of flamboyant
test."

UNDERSTANDING IV

IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT
HARM THAT ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

A. *Explanation of Understanding IV*

When large numbers of people live together in a society, some harm others. Harm
It may be physical (assaults) or intangible (slander). Harm can be purposefully inflicted
might be caused accidentally or through carelessness (auto or hunting accidents.)

Some harmful acts are crimes, and the actor may be punished. The threat of punis
some criminal activity. But all acts that cause injury are not crimes (to wit, many auto
broken promises). And even when the wrongdoer is punished, this does not repair the injur

If two parties cannot settle things themselves when one has been hurt by the othe
come into play in the form of a lawsuit. The person who has been injured can sue the pers
caused the harm and try to get the court to make the latter repair the harm. If the injur
the lawsuit, the court will normally give a judgment of money damages. Thus, with a civil
can help repair things when one person harms another.

However, there are many kinds of harm that are beyond the limited powers of law t
repair to a dented fender is one thing; rectifying things when the injury is, for example,
lost limb, or a ruined marriage is quite another. Effective repair of some injuries is be

B. *Teaching Understanding IV*

OBJECTIVES

- Given the details of a personal injury accident case, the student can identify th
  that the victim is hurt by the actions of the other party and can differentiate b
  hurts which can be corrected by law and those which cannot be so compensated.
- The student can suggest reasons why the legal interpretation of compensation for
  has changed in the last 100 years.

IV

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T ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

*of Understanding IV*

rge numbers of people live together in a society, some harm others. Harm can take many forms.
al (assaults) or intangible (slander). Harm can be purposefully inflicted (murder), or it
accidentally or through carelessness (auto or hunting accidents.)

rmful acts are crimes, and the actor may be punished. The threat of punishment discourages
tivity. But all acts that cause injury are not crimes (to wit, many auto accidents and
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parties cannot settle things themselves when one has been hurt by the other, the law may
n the form of a lawsuit. The person who has been injured can sue the person who supposedly
and try to get the court to make the latter repair the harm. If the injured person wins
court will normally give a judgment of money damages. Thus, with a civil law suit the law
things when one person harms another.

, there are many kinds of harm that are beyond the limited powers of law to repair. Money
ed fender is one thing; rectifying things when the injury is, for example, a lost life, a
ruined marriage is quite another. Effective repair of some injuries is beyond law's limits.

*erstanding IV*

he details of a personal injury accident case, the student can identify the various ways
e victim is hurt by the actions of the other party and can differentiate between those
hich can be corrected by law and those which cannot be so compensated.

dent can suggest reasons why the legal interpretation of compensation for personal injury
nged in the last 100 years.

Module 4

## QUESTIONS TO REACH UNDERSTANDING

- How does law provide for repairing things when one person has harmed another?
- How is law limited in its capacity to repair harm done one person by another?

## USE OF VISUALS

- Show a film dealing with an automobile accident. (Your Driver Education teacher may
  appropriate selections.) Have students identify all possible grievances that might
  by those involved in the incident depicted. Show the film again, noting visual clue
  personal damage to individuals, both as to physical impairment and emotional distres
  class discussion, attempt to reach consensus concerning which of these can be satisfi
  financial settlement.
- Have students photograph an actual or staged altercation among students. Ask others
  the pictures to identify from visual clues evidence of harm wrongfully done to an i
  by another. Discuss what compensation would be possible in settlement.

EACH UNDERSTANDING

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DETAILED DESCRIPTION OF STRATEGIES

## 1. Lawsuits for carelessly causing a death.

a) What provisions, if any, does New York State make for allowing people to sue someone who has carelessly caused the death of another person? Assign students to examine the section from the New York State constitution and report back to the class on their interpretation of any pertinent section. (See page 179.)

b) Is a human life priceless? Can you replace with any amount of money someone you have loved very dearly who has died? Discuss these questions with your pupils and then give them testimony of the following cases without telling them the judge or jury's decision. Have members of class play the judge and jury and come up with the amount of money to be given to the plaintiff. It will be interesting to see if their amounts vary greatly from the original cases. The student decisions can then be compared with the actual decisions. (See pages 179-182.)

—Wycko vs. Gnodtke, vol. 105 Northwestern Reporter, Second Series, p. 118 (1960)

—Fussner vs. Andert, vol. 113 Northwestern Reporter, Second Series, p. 355 (1962)

DISCUSSION OF STRATEGIES AND RESOURC

An important function that law fulf
is providing a rational process by w
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one party claims to have been injure
and the two cannot work things out b
However, the law is limited in how e
can repair harm; it has a limited nu
at its disposal. The principal way
to repair harm done is with money ju
If the court determines the party s
the alleged harm, the court orders
injured person the amount of money
pensate for the harm done. The othe
available to courts is the injuncti
demanding that the wrongdoer stop t
ity or do some specific act to repa

Yet the kinds of injuries that men
other in living together do not all
to satisfactory repair by such lega
in a further respect, law is limite
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that can be medically cured, an awa
be satisfactory repair. But no amo
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a friend or a loved one carelessly
make up for a permanent physical in
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ON OF STRATEGIES

## DISCUSSION OF STRATEGIES AND RESOURCES

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. Gnodtke, vol. 105 Northwestern
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vs. Andert, vol. 113 Northwestern
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An important function that law fulfills in society is providing a rational process by which an impartial third party (a court) can settle disputes when one party claims to have been injured by another, and the two cannot work things out by themselves. However, the law is limited in how effectively it can repair harm; it has a limited number of remedies at its disposal. The principal way that law seeks to repair harm done is with money judgment awards. If the court determines the party sued has caused the alleged harm, the court orders him to pay the injured person the amount of money that will compensate for the harm done. The other common remedy available to courts is the injunction, or court order, demanding that the wrongdoer stop the harmful activity or do some specific act to repair the harm.

Yet the kinds of injuries that men may wreak on each other in living together do not all lend themselves to satisfactory repair by such legal remedies. Thus, in a further respect, law is limited. When someone's negligence results in property damage or an injury that can be medically cured, an award of money may be satisfactory repair. But no amount of money or nothing a court might order can repair the loss of a friend or a loved one carelessly killed, or even make up for a permanent physical injury such as loss of sight. Notwithstanding its inability to compensate for such harms, law in its limited way does what it can towards repair by assessing money damages.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCE

### 2. Lawsuits for interference with marital happiness.

a) Ask pupils if they know the meaning of the phrase, "alienation of affections." After discussion, examine New York State Civil Rights Law concerning the State's limits in bringing a lawsuit against another individual for alienation of affection.

b) Use the case of Moulin vs. Monteleone, vol. 115 Southern Reporter, p. 447 (1927) on page 182 for discussion.

c) Bring out in discussion that laws about different issues may vary from state to state; could the case of Moulin vs. Monteleone take place in New York? Why or why not?

Certain physical injuries are not the
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factory legal repair. Some mental an
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in some instances (for example, sland
to reputation), courts attempt to make
awarding money damages. In other ins
example, interference with affections
has proven law to be largely unfit to
injuries.

### 3. Law suits to repair harm done by destruction of unique goods.

a) Divide the class into three distinct juries. Have each jury consider one of the three distinct cases. Each jury could appoint a foreman who might conduct a discussion concerning the amount of money to be awarded to the individual who has lost some irreplaceable item. The foreman can report back to the class what their decision is.

The third subject for case study sug
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concerns unique possessions. If som
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Certain physical injuries are not the only kinds of harm done one person by another that defy satisfactory legal repair. Some mental and emotional injuries are beyond law's limits to rectify. Again, in some instances (for example, slanderous injury to reputation), courts attempt to make repairs by awarding money damages. In other instances (for example, interference with affections), experience has proven law to be largely unfit to repair any injuries.

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The third subject for case study suggested to demonstrate law's limited effectiveness in repairing harm concerns unique possessions. If someone takes or destroys the property of someone else, the owner can sue and force payment for replacement of such property. But if the lost property is unique (a coin collection or heirloom), the money judgment is hardly a satisfactory substitute for the original.

Sample hypotheticals:

—Case #1 - Suppose your mother took her antique wedding ring, which has been in the family for 150 years, to the jeweler to be cleaned. The jeweler carelessly throws the ring into the incinerator. Your mother sued the jeweler for the wrong he had done her. Sitting as the jury, have the class determine how much mother should recover from the jeweler. Consider whether any judgment can really satisfactorily repair this wrong.

—Case #2 - Suppose Suzie is an orphan girl who lost her parents in an auto accident when she was 12. She has only one photograph of her parents. As a practical joke, a friend destroyed this picture. Suzie sued this friend for the harm he has caused her. Sitting as the jury, have the class determine how much Suzie should recover from her friend. Consider whether any judgment can really satisfactorily repair this wrong.

—Case #3 - In the movie, "Blackboard Jungle," several students destroy the teacher's rare and irreplaceable collection of jazz records which he has brought to class. Could the teacher sue? Should he? Can this harm be remedied at all?

b) Assign each pupil to work with a partner to write up an instance where one individual harms another either by word or deed and no action can be taken by law to rectify the harm. (Some of the members of the class may feel that the "irreparable" harm can be corrected.)

## 'TION OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

## RESOURCES*

New York State Constitution, Article I, Section 16.

"[Damages for injuries causing death.] §16. The right of action now existing to
damages for injuries resulting in death, shall never be abrogated; and the amou
coverable shall not be subject to any statutory limitation. (Formerly §18. Re
by Constitutional Convention of 1938 and approved by vote of the people Novembe

Wycko vs. Gnodtke, vol. 105 Northwestern Reporter, Second Series, p. 118 (1960)

"The case before us concerns, in general, damages for the life of a child neglig
killed. Specifically it is whether or not a jury award of approximately $15,00
parents of a 14-year-old boy was excessive.

"So far as the facts are concerned we will simply say that the deceased was walk
pletely off a highway, with some other boy scouts. He was killed by an automob
by one defendant and driven by the other. The car suddenly ran onto the should
2 of the scouts. The plaintiff here is the administrator of the estate of one

"To substantiate the damage claims, testimony was introduced as to the boy's dep
trustworthiness, and ambition. It was established that he helped his father an
work the family farm. Upon such evidence the jury awarded $14,000, plus $979.5
funeral and burial expenses. The trial judge said it was too much. He said th
justified an award of only $7,500, plus $979.50 for funeral and burial expenses
boy his age 'could have had the earning capacity indicated by this verdict,' an
a new trial unless remittitur were filed.

"Thus we come once more to a consideration of the problem of the 'pecuniary loss
by the parents of a deceased minor child. What we in Michigan have done, in co
many other courts, is to require the subtraction, from the hypothetical earning
child prior to his majority, the speculative costs of his rearing. The differe
any, we say is the parents' pecuniary loss. ...

[Decision]

"This, then, was the day from which our precedents come, [from] a day when employ
children of tender years was the accepted practice and their pecuniary contribu

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## RESOURCES[*]

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to the family both substantial and provable. ...

"...In fact, our society, by one means or another, now attempts to keep children out
the general labor market. Yet there still exists in the law this remote and repuls
backwash of time and civilization...where precedents...tell us that the value of li
of a child must be measured solely by the standards of the day when he peddled the
of his hands and the strength of his back at the factory gates. ...

"[3,4] What, then, is the pecuniary loss suffered because of the taking of the child
life? It is the pecuniary value of the life. ... In the cases coming to us a life
taken and it is our duty, as best we can, to put a fair valuation on it. In so doi
we will keep in mind that the act is remedial in its character and our duty is to
it liberally in favor of the beneficiaries. ...

"...The fiction now employed as the measure of pecuniary loss should be abandoned.
perpetuates an attitude towards the value of a child's life completely repudiated
legislation and the enlightened child-welfare policies of this jurisdiction. It do
violence to the intent of the act, which is to grant a recovery whenever a death '
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upon our juries by the savage exploitations of the last century must no longer by
by our courts.

"The order granting new trial subject to remittitur is reversed [that is, the fathe
entitled to the money that had been granted.]"

Fussner vs. Andert, vol. 113 Northwestern Reporter, Second Series, p. 355 (1962)

"[1] It appears that the record that plaintiff's daughter, Sandra Fussner, died fr
injuries received in an automobile accident which the jury found was caused by the
negligence of the defendant. The father was 49 years of age at the time of the tr
and is an engineer in a railroad car repair shop. Sandra was the younger of two
daughters. Her mother died in 1952 after an illness which continued for 2 years.
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[Decision]

"In submitting the case to the jury the court gave the standard and approved instru on the subject of damages:

'If you award the plaintiff damages they must be in an amount which will fully, fairly and adequately reflect the present monetary value of any future contributi in money or services which you find Sandra would have made to her father during t remainder of their lives had she not been killed in this accident. In other words if your verdict is for the plaintiff you must decide from the evidence what pecuni or financial loss the plaintiff has sustained, but you may not include any amount compensation for the father's grief, sorrow or mental anguish, nor are you permit to make an award for the father's loss of his daughter's comfort, society or comp ship.' ...

"There is no contention that the court was in error in telling the jury that they not include damages for the father's grief, sorrow, or mental anguish. It is ass that the error lies in the fact that the instruction limited recovery to loss in of dollars and that in context the instruction permitting recovery for 'contribut in services' referred to labor or other employment performed pursuant to an under ing or agreement with the survivor and excluded from the consideration of the jur real and substantial losses, which might be considered as having a pecuniary adva sibility of maintaining the household until 1955 when the sister married. Thereafter responsibilities were assumed by the decedent. In the fall of 1956 the father re- d. The second wife continued her employment outside the home. The decedent at the f her death was employed as a typist-receptionist at a department store and for the month period prior to her death earned $1,104.95. She purchased her own necessities, s items for the house, and gifts for her father out of her earnings. She paid $7 ek for her room, but beyond that no accounting was kept of what she spent for the old. There was a pleasant relationship between the decedent, her father, and step- , and she considered their home as her own. After her father's remarriage, there change in her routine of housework. Because the stepmother worked, the father upon her as before and it was customary for Sandra to start meals at night before epmother had returned home from work. ...

ion]

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to the survivor and which would be encompassed within the broad term of society ar
companionship. ...

"...The Supreme Court, Murphy, J., held that pecuniary-loss test limiting recovery
parent for death of a child by wrongful act to loss of earnings, contributions an
services in terms of dollars is unduly restrictive and parent may recover for los
of advice, comfort, assistance and protection which jury might find to be of a pe
value to the parent if child had lived."

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* - Un
"The limits of law," Chapter 2. Lexington, Mass. Ginn and Company. 1973.

__New York Civil Rights Law__, Section 80-a.

**"§ 80-a. Causes of action for alienation of affections, criminal conversation, se
and breach of contract to marry abolished.**

The rights of action to recover sums of money as damages for alienation of af
criminal conversation, seduction, or breach of contract to marry are abolished.
done within this state shall operate to give rise, either within or without this
to any such right of action. No contract to marry made or entered into in this s
shall operate to give rise, either within or without this state, to any cause or
of action for its breach."

__Moulin vs. Monteleone__, vol. 115 __Southern Reporter__, p. 447 (1927)

"...The facts disclosed...are that the plaintiff and the offending spouse were mar
Arkansas nearly 16 months ago—...—and they soon after moved to New Orleans, whe
plaintiff introduced his wife to his erstwhile friend, Monteleone. About three m
later, plaintiff went away on a business trip, leaving his wife with a lady cousi
He corresponded with her daily, by letters and telegrams and telephone messages
13 days, when she ceased replying, and his letters were returned unopened, beari
postmark, 'Removed.' Meanwhile, Monteleone, it was alleged, had paid frequent vi
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, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* - Unit V - limits of law," Chapter 2. Lexington, Mass. Ginn and Company. 1973.

k Civil Rights Law, Section 80-a.

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[Decision]

"The best way to suppress such conduct as is described in the plaintiff's petition would be by means of a penal statute condemning both of the particepts criminis. A law that would allow the husband compensation in money for such a wrong would be revolting to a majority of men, and might tend more to encourage blackmail than to protect the home. It is not astonishing that the Civil Code makes no provision for such a right of action.

"The judgment is affirmed. [That is, that the plaintiff is not entitled to his money

Module 4

## UNDERSTANDING V

ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AI
CIRCUMSTANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE TRUE FAC

### A. *Explanation of Understanding V*

In a criminal case, the district attorney, as the people's respresentative, accuse
mitting a crime. In a civil case, one private person sues another, usually claiming a righ
damage repaired. In both criminal and civil cases there are trials.

When cases go to trial, unanswered questions of two kinds may arise. First, it m
exactly what law controls the case. For example, what is the law concerning possession o
small quantity of marijuana? Or will the law allow a civil suit to recover money when som
causes the death of an unborn child?

But more often, when a case goes to trial, the law itself is not the issue; both p
agree on the rules of law; they are disputing the facts of the case. For example, the dis
claims X killed Y in cold blood; X says it was purely a matter of self-defense. Both part
law, that cold blooded killing is murder and that self-defense is a valid excuse, but they
took place—the facts. Likewise, in civil cases, trials are usually concerned with disput
auto negligence case, both parties may agree that driving on the left side of the road is r
is likely to be a question about who was driving on which side of the road at a given mome

Generally speaking, it is the job of the judge, with the help of the lawyers, to
of the case. On the other hand, there is a right to have a jury settle disputed facts.

Finding out what really did happen when people are presenting conflicting stories
aspect of "adjudication." The law uses several techniques to make this process of fact fi
accurate as possible. There are usually lawyers for each side to present the case. There
of evidence regulating the information that can be presented to the jury. There are rules
wins if the jury is equally convinced by evidence of each side. There are certain presump
criminal cases a person is presumed innocent until proven guilty beyond any reasonable dou
presumed sane until proven insane; a person is presumed to have intended the natural conse
act.

V

LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY,
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is equally convinced by evidence of each side. There are certain presumption rules—in
person is presumed innocent until proven guilty beyond any reasonable doubt; a person is
ntil proven insane; a person is presumed to have intended the natural consequences of his

But even with all these rules and processes for finding the facts, the law cannot al the true facts. Instead, it must try to reach a resolution of disputed facts by a fair and ra Undoubtedly, this version of the facts is sometimes inaccurate; determination of the truth is s yond the limited powers of law.

B. *Teaching Understanding V*

OBJECTIVES

- Given a report of an incident, or testimony from a court case, the student can corre facts which can be proven from observations open to question or misinterpretation.
- The student can list reasons why the facts behind certain reports cannot be ascerta
- After viewing a film of a court proceeding, the student can identify those aspects o which appeal to the emotions of the listener and thereby obscure the facts.

QUESTIONS TO REACH UNDERSTANDING

- Aren't facts facts?
- What elements help explain why law often must deal in probabilities rather than abso
- Why does the public go along with a legal process that sometimes cannot be certain o true facts?

USE OF VISUALS

- Using the New York State Historical Society's *Painting As Social History*, program "J In the Backwoods," identify all the factors that might obscure the facts of the case Identify also those factors that help to reveal the facts. Discuss the reasons that dure is more desirable than having no trial at all.

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Instead, it must try to reach a resolution of disputed facts by a fair and rational means.
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*lerstanding V*

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O REACH UNDERSTANDING

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acts?

ALS

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s more desirable than having no trial at all.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOUR

## 1. Imperfections in human memory and sense perception.

a) Have each student in the class write a short but detailed account of some unexpected incident that occurred in the class or at the school some time more than a month ago, but within the last year or two (for example, a fire, an accident, a fight, etc.). In class, systematically compare these accounts to see if memory or other factors obscure the "true" happenings of the past and interfere with efforts to determine what truly did happen. As students report their versions, undoubtedly, other pupils will chime in to disagree.

b) Stage a surprise skit for the class in which someone breaks into the classroom, has a quick and loud exchange of words with the teacher, threatens an assault on the teacher with some weapon, and quickly retreats. You might secretly plan it with one of the more discreet members of your class well in advance, complete with written details including gestures and words. (It is probably wise to alert your administrator to this incident, even possibly having him intercede as a "surprise observer.")

The final limit of law suggested fo
concerns law's limited capacity to
truth. Usually when either a civi
case goes to trial, the matter bein
cerns a dispute as to what are the
Through the process of adjudicatio
such fact disputes in what is inte
rational, deliberate fashion. How
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The truth is not uncommonly beyond
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the truth. Twenty-five people, if
sufficiently by surprise, may hone
seen and heard 25 different versio
same incident. Another variable t
capacity to determine the truth is
party to a fact dispute may simply
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procedures of adjudication may cau
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thing), oftentimes the law must r
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## TION OF STRATEGIES

## DISCUSSION OF STRATEGIES AND RESOURCES

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rise observer.")

The final limit of law suggested for consideration concerns law's limited capacity to determine the truth. Usually when either a civil or a criminal case goes to trial, the matter being contended concerns a dispute as to what are the facts of the case. Through the process of adjudication the law resolves such fact disputes in what is intended to be a rational, deliberate fashion. However, legal resolution of fact disputes and determination of the truth are not the same.

The truth is not uncommonly beyond law's limits. Because of such factors as memory and partiality toward recollection of things in a particular way, the facts, as reported in a courtroom by witnesses months after the occurrence of the events in question, may be obscured. Even without the intervention of time, imperfect human sense perception may obscure the truth. Twenty-five people, if they are taken sufficiently by surprise, may honestly report having seen and heard 25 different versions of the same incident. Another variable that limits law's capacity to determine the truth is dishonesty. One party to a fact dispute may simply be trying to protect himself or someone else. Although rational procedures of adjudication may cause an occasional dishonest witness to get "caught in his own lies" (as invariably is the case when TV lawyers do their thing), oftentimes the law must resolve a fact dispute in the face of persistent conflicting stories, neither of which can be proven true in any absolute sense.

DETAILED DESCRIPTION OF STRATEGIES

Before any discussion, have each member of the class record in detail what he or she has witnessed. In class, systematically compare these accounts with a taped account to see if human sense perception obscures "true" happenings of the past and interferes with efforts to determine what really did happen. If time permits, a jury trial could be held to establish the facts in the incident.

DISCUSSION OF STRATEGIES AND RESOUR

The suggested procedures within thi
attempt to illustrate two things.
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then comparing these descriptions,
graphically that past facts are no
In considering why this is so, ele
memory, infallible sense perceptio
latent prejudice may be evident.

2. Limitations of judicial fact finding.

a) Present for student reading and discussion the cases on page 188 which include a hypothetical school disciplinary matter in which the opposite sides of the case present conflicting versions of the facts, and the party in whose favor the fact dispute is resolved will be the winner of the case. Regardless of who wins, consider whether it is possible to know for certain who really is telling the truth if each side sticks to his story.

b) Have some of the members of the class prepare and present a court case in which there is conflicting evidence on the parts of prosecution and the defense. The rest of the class can sit in as a jury. It will be interesting to see how they will evaluate the case in the light of conflicting stories presented.

The examination of the jury's fact
may demonstrate that the jury's jo
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## DISCUSSION OF STRATEGIES AND RESOURCES

The suggested procedures within this understanding attempt to illustrate two things. First, by having each student describe an event he has witnessed and then comparing these descriptions, students may see graphically that past facts are not easily recreated In considering why this is so, elements of imperfect memory, infallible sense perception, and overt or latent prejudice may be evident.

### 2. Limitations of judicial fact finding.

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ies presented.

The examination of the jury's fact-finding function may demonstrate that the jury's job is often not a foolproof task of simply sorting out the truth from the lies. Often the jury, without ever knowing the truth, reaches a result by following a rational and deliberate procedure that is merely designed to produce a *fair* result with maximum *probability* of accuracy.

## DETAILED DESCRIPTION OF STRATEGIES

c) Have class view a film showing presentation of conflicting testimony at trial. Before showing the portion of the film revealing the jury's verdict, divide the class into groups of six, nine, or 12 to deliberate as juries and reach verdicts on their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as fairly and accurately as possible. The following movie titles are possible choices. If movies are unavailable, pupils could read the movie version of "To Kill a Mockingbird" by Harper Lee or the play, "Twelve Angry Men."

—"The Bill of Rights in Action: Story of a Trial," A Bernard Wilets Film. 22 min. (Trial of misdemeanor offense.)
—"To Kill A Mockingbird"
—"Twelve Angry Men"

d) Have some of pupils in class stage a court drama in advance. Have the rest of the class view the trial which involves a case where there is conflicting evidence on a question of fact. Before hearing what verdict the jury actually reached, return to class and divide the class into groups to reach verdicts of their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as *fairly* and *accurately* as possible.

## DISCUSSION OF STRATEGIES AND RESOURC

**A drawing by Handelsman from th**
**Magazine, Inc. (1972) has been**
**because of copyright restrictio**

## TION OF STRATEGIES

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## DISCUSSION OF STRATEGIES AND RESOURCES

A drawing by Handelsman from the New Yorker Magazine, Inc. (1972) has been omitted here because of copyright restrictions.

# RESOURCES*

Sample Cases:

People vs. Ivy, vol. 244 California Appellate Reports, Second Series, p. 406

Narcotics officer claimed to have bought three "joints" from Ivy. Ivy cla
home with his family at the alleged time of illegal sale. A jury found Iv
selling marijuana. Is there any way of knowing for certain whose version
was in fact true?

Ivy appealed the jury's decision on the basis that the judge made certain
the jury before they made their deliberation that were prejudicial to him.
decided in the appeal case that according to California law it was within
of a judge in commenting on evidence to express his opinion as to the guil
nocense of the accused so long as the province of the jury was not invade

People vs. Pearson, vol. 169 Northeastern Reporter, Second Series, p. 252 (

District attorney's witness claimed X was raping and robbing her at the ti
question. X's witness said he saw X at home asleep at the time in questi
both witnesses stand firm, is there any way a court can know for certain
the "true" facts of this case?

Berry vs. Chaplin, vol. 169 Pacific Reporter, Second Series, p. 442 (1946)

Charles Chaplin was sued in a paternity case. In the face of conflicting
including a negative blood test, the jury found Chaplin was the father of
Is there any way of knowing for certain what are the "true" facts of the

Sample Hypothetical Case:

Suzie Butts is caught by the principal in a smoke-filled girls' room. Suzi
she hasn't been smoking and that the bathroom was smoke-filled when she ent
principal says no one entered the girls' room for 15 minutes prior to Suzie
or not Suzie gets disciplined depends upon whether her story is believed.
the outcome of this case, if Suzie sticks to her story, is it possible to e
whether Suzie was or was not smoking?

*Direct quotations from statutes are indicated by the use of quotation marks. Oth
are summaries or paraphrases of the statute listed.

## RESOURCES*

Cases:

le vs. Ivy, vol. 244 California Appellate Reports, Second Series, p. 406 (1966)

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le vs. Pearson, vol. 169 Northeastern Reporter, Second Series, p. 252 (1960)

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Hypothetical Case:

e Butts is caught by the principal in a smoke-filled girls' room. Suzie claims hasn't been smoking and that the bathroom was smoke-filled when she entered. The cipal says no one entered the girls' room for 15 minutes prior to Suzie. Whether ot Suzie gets disciplined depends upon whether her story is believed. Regardless of outcome of this case, if Suzie sticks to her story, is it possible to ever determine her Suzie was or was not smoking?

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tations from statutes are indicated by the use of quotation marks. Other statements ies or paraphrases of the statute listed.

# OPTIONAL BACKGROUND READING MATERIAL FOR TEA

## MODULE I - UNDERSTANDING I

Berman, H.J. & Greiner, W.R. *The nature and functions of law.* Part One - "Law as a p dispute resolution," 2d ed. Brooklyn. Foundation Press. 1966.

Summers, R.S. "Law, adjudicative processes and civil justice," in *Law, reason and jus* (Graham Hughes, ed., 1968). New York. New York University Press. 1969.

Howard, J.W., Jr. "Adjudication considered as a process of conflict resolution," in *J public law,* vol. 18, p. 339. 1969.

## MODULE I - UNDERSTANDING II

Fuller, L.L. *The morality of law.* New Haven. Yale University Press. 1964. pp. 46-

Freund, Ernst. *Legislative regulation.* New York. The Common-Wealth Fund. 1932.

Fainsod, Merle. "Nature of regulatory process," in *Public policy.* 1940. p. 297.

## MODULE I - UNDERSTANDING III

Hart, H.M., Jr. "The aims of the criminal law," in *Law and contemporary problems,* vo

Williams, J.E.H. "The proper scope and function of the criminal law," in *Law quarter* vol. 74. 1958. p. 76.

## MODULE II - UNDERSTANDING I

Summers, R.S. & Howard, C.G. *Law, its nature, functions and limits,* 2d ed. Chapters Cliffs, N.J. Prentice-Hall, Inc. 1972.

____. "The technique element in law," 59 *California law review.* 1971. p. 733.

## L BACKGROUND READING MATERIAL FOR TEACHERS

### TANDING I

& Greiner, W.R. *The nature and functions of law.* Part One - "Law as a process of solution," 2d ed. Brooklyn. Foundation Press. 1966.

. "Law, adjudicative processes and civil justice," in *Law, reason and justice.* ghes, ed., 1968). New York. New York University Press. 1969.

, Jr. "Adjudication considered as a process of conflict resolution," in *Journal of* , vol. 18, p. 339. 1969.

### STANDING II

*The morality of law.* New Haven. Yale University Press. 1964. pp. 46-65.

t. *Legislative regulation.* New York. The Common-Wealth Fund. 1932.

le. "Nature of regulatory process," in *Public policy.* 1940. p. 297.

### TANDING III

Jr. "The aims of the criminal law," in *Law and contemporary problems,* vol. 23. 1958. p. 401

E.H. "The proper scope and function of the criminal law," in *Law quarterly review,* 1958. p. 76.

### STANDING I

. & Howard, C.G. *Law, its nature, functions and limits,* 2d ed. Chapters 1-5. Englewood J. Prentice-Hall, Inc. 1972.

technique element in law," 59 *California law review.* 1971. p. 733.

*McKinney's consolidated laws of New York.* Vol. 24. "Highways."

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*Witness To An Accident*. Film. Indiana University, Audio Visual Center. 11 min. sd. b/w. 16 mm. 196

*Your Rights and What They Really Mean*. 6 filmstrips and 3 cassettes. Eyegate, 146-01 Archer Avenue, Jama

### Collections of Study Prints

Documentary Photo Aids, Box 2620, Sarasota, Florida 33578.
(Ask for listing.)

New York State Historical Society, Cooperstown, New York.
Exhibit Portfolios
*Growing Up Black*
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Silver Burdett Company, Park Avenue & Columbia Road, Morristown, N.J. 07960
*Pictures That Teach: Environmental Education*

Holt, Rinehart & Winston, Inc., 383 Madison Avenue, New York 10017
Holt Databank System
*Data Pack 8: The Poor*
*Data Pack 9: Pollution*

f Rights Series. Films. Encyclopaedia Britannica Educational Corporation, 425 North Michigan Avenue, Chicago,
m.
*ible Reading in the Public Schools: The Schempp Case.* 27 min. sd. b/w and color.
*reedom to Speak: The Feiner Case.* 27 min. sd. color.
*ree Press versus Fair Trial by Jury: The Shepherd Case.* 27 min. sd. color.
*ight to Counsel: The Gideon Case.* 27 min. sd. b/w and color.
*ight to Remain Silent: The Miranda Case.* 27 min. b/w and color.

*tter of Choice.* Film. NBC Educational Enterprises. Reel I - 26 min. Reel II - 27 min. sd. color. 16 mm.

lm. Indiana University, Audio Visual Center, Bloomington, Indiana 47401. 60 min. sd. b/w. 16 mm. 1965.

*anization of American Courts.* Film. Films Incorporated, 1150 Wilmette Avenue, Wilmette, Illinois 60091.
/w. 16 mm. 1962.

NBC Educational Enterprises. 25 min. sd. color. 16 mm. 1970.

*bird.* Film. Universal Sixteen, 445 Park Avenue, New York 10022. 129 min. sd. b/w. 16 mm. (Only available

*ident.* Film. Indiana University, Audio Visual Center. 11 min. sd. b/w. 16 mm. 1961.

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